

Committee Substitute for Senate Bill No. 358

An act relating to long-term care; amending s. 394.455, F.S.; redefining the term "mental illness" for purposes of part I of ch. 394, F.S.; amending s. 394.492, F.S.; redefining the term "child or adolescent who is experiencing an acute mental or emotional crisis" for purposes of part III of ch. 394, F.S.; amending s. 394.493, F.S.; revising the income standard that is the basis for a sliding fee scale adopted by the Department of Children and Family Services for mental health services provided to children and adolescents; amending s. 394.65, F.S.; redesignating part IV of ch. 394, F.S., as "The Community Substance Abuse and Mental Health Services Act"; amending s. 394.66, F.S.; providing legislative intent with respect to substance abuse and mental health services; amending s. 394.67, F.S.; revising definitions; creating s. 394.674, F.S.; providing clinical eligibility for substance abuse and mental health services funded by the Department of Children and Family Services; providing fee collection requirements; providing for availability of crisis services, substance abuse services, and mental health services; requiring that the Department of Children and Family Services adopt rules; requiring contracting service providers to establish a sliding fee scale; providing for copayments; amending s. 394.675, F.S.; revising the types of services provided by the department under the substance abuse and mental health service system; creating s. 394.676, F.S.; authorizing the Department of Children and Family Services to establish an indigent psychiatric medication program; requiring the department to adopt rules; providing for certain continued treatment of persons discharged from facilities; amending s. 394.74, F.S.; conforming provisions relating to contracts for substance abuse and mental health programs to changes made by the act; amending s. 394.75, F.S.; providing for a state master plan for financing and delivery of community-based substance abuse and mental health services; providing plan requirements; providing for annual update and submission to the Legislature; requiring district health and human services boards, rather than planning councils, to prepare district substance abuse and mental health plans; providing plan requirements; revising the population groups to be addressed in the plans to conform to changes made by the act; amending ss. 394.4574, 394.76, 394.77, 394.78, 394.908, and 397.321, F.S., relating to department responsibilities for mental health residents who reside in certain assisted living facilities, the financing of district programs and services, uniform information and reporting systems, procedures for audits and dispute resolution, distribution of appropriations, and development of a district plan for substance abuse services; conforming provisions to changes made by the act; requiring the department to submit a report to the Legislature which describes the compliance of providers with performance outcome standards; directing the Commission on Mental Health and Substance Abuse to conduct a study and make certain recommendations to the Legislature; including certain older adults in the target groups for substance abuse and mental health

services of the Department of Children and Family Services; requiring the department to track and report on providers of such services to older adults; repealing s. 394.79, F.S., relating to a state alcohol, drug abuse, and mental health plan; amending s. 400.6065, F.S.; providing employment screening requirements for hospice personnel; providing penalties; renumbering and amending s. 402.48, F.S.; revising the definition of "health care services pool"; providing background screening requirements for applicants for registration, managing employees, and financial officers of such entities, and certain others; providing penalties; requiring such entities to obtain a certificate of registration from the Agency for Health Care Administration; providing for injunction; revising application procedures; revising responsibilities regarding temporary employees; increasing a penalty; transferring powers, duties, functions, and appropriations relating to health care services pools from the Department of Health to the Agency for Health Care Administration; amending s. 415.102, F.S.; revising definitions; amending s. 415.103, F.S.; providing for a central abuse hotline to receive reports of abuse, neglect, or exploitation of vulnerable adults; amending s. 415.1034, F.S.; conforming provisions relating to mandatory reporting; amending s. 415.1035, F.S.; providing duty of the Department of Children and Family Services to ensure that facilities inform residents of their right to report abuse, neglect, or exploitation; amending s. 415.1036, F.S.; conforming provisions relating to immunity of persons making reports; amending ss. 415.104 and 415.1045, F.S.; revising provisions relating to protective investigations; extending the time limit for completion of the department's investigation; providing for access to records and documents; providing for working agreements with law enforcement entities; amending s. 415.105, F.S.; authorizing the department to petition the court to enjoin interference with the provision of protective services; amending s. 415.1051, F.S.; providing for enforcement of court-ordered protective services when any person interferes; amending s. 415.1052, F.S., relating to interference with investigations or provision of services; amending s. 415.1055, F.S.; deleting provisions relating to notification to subjects, reporters, law enforcement, and state attorneys of a report alleging abuse, neglect, or exploitation; amending s. 415.106, F.S., relating to cooperation by criminal justice and other agencies; amending s. 415.107, F.S.; providing certain access to confidential records and reports; providing that information in the central abuse hotline may not be used for employment screening; amending s. 415.1102, F.S.; revising provisions relating to adult protection teams; amending s. 415.111, F.S., relating to criminal penalties; amending s. 415.1111, F.S.; revising provisions relating to civil penalties; amending s. 415.1113, F.S., relating to administrative fines for false reporting; amending s. 415.113, F.S., relating to treatment by spiritual means; amending s. 435.03, F.S.; revising provisions relating to level 1 and level 2 screening standards; amending s. 435.05, F.S.; revising provisions relating to screening requirements for covered employees; amending s. 435.07, F.S., relating to exemptions; amending s. 435.08, F.S., relating to payment for processing

records checks; amending s. 435.09, F.S., relating to confidentiality of background check information; amending ss. 20.43, 455.712, and 468.520, F.S.; deleting references to health care services pools in provisions relating to the Department of Health; correcting a cross-reference; amending ss. 39.202, 90.803, 110.1127, 112.0455, 119.07, 232.50, 242.335, 320.0848, 381.0059, 381.60225, 383.305, 390.015, 393.067, 393.0674, 394.459, 394.875, 355.0055, 395.0199, 395.3025, 397.461, 400.022, 400.071, 400.215, 400.414, 400.4174, 400.426, 400.428, 400.462, 400.471, 400.495, 400.506, 400.509, 400.512, 400.5572, 400.628, 400.801, 400.805, 400.906, 400.931, 400.95, 400.953, 400.955, 400.962, 400.964, 402.3025, 402.3125, 402.313, 409.175, 409.912, 430.205, 447.208, 447.401, 464.018, 468.826, 468.828, 483.101, 483.30, 509.032, 744.309, 744.474, 744.7081, 775.21, 916.107, 943.0585, and 985.05, F.S.; conforming to the act provisions relating to protection of vulnerable adults and the central abuse hotline; repealing s. 415.1065, F.S., relating to management of records of the central abuse registry and tracking system; repealing s. 415.1075, F.S., relating to amendment of such records, and expunctions, appeals, and exemptions with respect thereto; repealing s. 415.1085, F.S., relating to photographs and medical examinations pursuant to investigations of abuse or neglect of an elderly person or disabled adult; repealing s. 415.109, F.S., relating to abrogation of privileged communication in cases involving suspected adult abuse, neglect, or exploitation; providing an appropriation; amending s. 400.0065, F.S.; providing duty of the State Long-Term Care Ombudsman to prepare and submit annual budget requests; providing duty to enter into a cooperative agreement relating to investigation of Medicaid fraud; providing for consultation on rule-making by the Department of Elderly Affairs relating to conflict of interest; deleting provisions relating to governmental interference with duties of the Office of State Long-Term Care Ombudsman; creating s. 400.0066, F.S.; providing relationship between the office and departments of state government; providing responsibility of the Department of Elderly Affairs for administrative support and costs for the program; amending ss. 400.0067 and 400.0069, F.S.; revising provisions relating to appointment and terms of service of members of the state and local ombudsman councils; amending s. 400.0077, F.S.; providing authority of the office to adopt rules relating to disclosure of files maintained by the program; deleting such rulemaking authority of the department; amending ss. 20.41, 395.3025, 400.0063, 400.0071, 400.0073, 400.0075, 400.0079, 400.0081, 400.0083, 400.0087, 400.0089, 400.0091, 400.021, 400.022, 400.0255, 400.19, 400.191, 400.23, 400.419, 400.428, 400.434, 400.435, 400.4415, 400.619, and 400.628, F.S.; clarifying and conforming references and cross references; providing appropriations; amending s. 39.407, F.S.; revising provisions governing the medical, psychiatric, and psychological examination and treatment of children; prescribing procedures for the admission of children or adolescents to residential treatment centers for residential mental health treatment; amending s. 394.4785, F.S.; prohibiting children and adolescents from admission to state mental health treatment facilities;

requiring residential treatment centers for children and adolescents to adhere to certain standards; amending s. 394.67, F.S.; defining the term “residential treatment center for children and adolescents”; amending s. 394.875, F.S.; requiring the licensure of residential treatment centers for children and adolescents; requiring the Department of Children and Family Services to adopt rules; amending s. 409.175, F.S.; specifying that residential child-caring agencies do not include residential treatment centers for children and adolescents; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (18) of section 394.455, Florida Statutes, is amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(18) “Mental illness” means an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person’s ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.

Section 2. Subsection (7) of section 394.492, Florida Statutes, is amended to read:

394.492 Definitions.—As used in ss. 394.490-394.497, the term:

(7) “Child or adolescent who is experiencing an acute mental or emotional crisis” means a child or adolescent who experiences a psychotic episode or a high level of mental or emotional distress which may be precipitated by a traumatic event or a perceived life problem for which the individual’s typical coping strategies are inadequate. The term ~~an acute mental or emotional problem~~ and includes a child or adolescent who meets the criteria for involuntary examination specified in s. 394.463(1).

Section 3. Subsections (2) and (3) of section 394.493, Florida Statutes, are amended to read:

394.493 Target populations for child and adolescent mental health services funded through the department.—

(2) Each mental health provider under contract with the department to provide mental health services to the target population shall collect fees from the parent or legal guardian of the child or adolescent receiving services. The fees shall be based on a sliding fee scale for families whose net family income is at or above 150 ~~between 100 percent and 200 percent~~ of the Federal Poverty Income Guidelines. The department shall adopt, by rule, a sliding fee scale for statewide implementation. ~~A family whose net family~~

income is 200 percent or more above the Federal Poverty Income Guidelines is responsible for paying the cost of services. Fees collected from families shall be retained in the service district and used for expanding child and adolescent mental health treatment services.

(3) Each child or adolescent who meets the target population criteria of this section shall be served to the extent possible within available resources and consistent with the portion of the district substance alcohol, drug abuse, and mental health plan specified in s. 394.75 which pertains to child and adolescent mental health services.

Section 4. Section 394.65, Florida Statutes, is amended to read:

394.65 Short title.—This part ~~may be cited shall be known~~ as “The Community Substance Alcohol, Drug Abuse, and Mental Health Services Act.”

Section 5. Section 394.66, Florida Statutes, is amended to read:

394.66 Legislative intent with respect to substance alcohol, drug abuse, and mental health services.—It is the intent of the Legislature to:

(1) Recognize that mental illness and substance abuse impairment are diseases that are responsive to medical and psychological interventions and management that integrate treatment, rehabilitative, and support services to achieve quality and cost-efficient outcomes for clients and for community-based treatment systems.

(2)(1) Promote and improve the mental health of the citizens of the state by making substance abuse and mental health treatment and support services available to those persons who are most in need and least able to pay, through a community-based system of care comprehensive, coordinated alcohol, drug abuse, and mental health services.

(3)(2) Involve local citizens in the planning of substance alcohol, drug abuse, and mental health services in their communities.

(4) Ensure that the department and the Agency for Health Care Administration work cooperatively in planning and designing comprehensive community-based substance abuse and mental health programs that focus on the individual needs of clients.

(5)(3) Ensure that all activities of the Department of Children and Family Services and the Agency for Health Care Administration, and their respective contract providers, involved in the delivery of substance its contractors are directed toward the coordination of planning efforts in alcohol, drug abuse, and mental health treatment and prevention services are coordinated and integrated with other local systems and groups, public and private, such as juvenile justice, criminal justice, child protection, and public health organizations; school districts; and local groups or organizations that focus on services to older adults.

(6)(4) Provide access to crisis services to all residents of the state with priority of attention being given to individuals exhibiting symptoms of acute or chronic mental illness, alcohol abuse, or substance drug abuse.

(7) Ensure that services provided to persons with co-occurring mental illness and substance abuse problems be integrated across treatment systems.

~~(8)(5)~~ Ensure continuity of care, consistent with minimum standards, for persons who are released from a state treatment facility into the community.

(9)(6) Provide accountability for service provision through statewide standards for treatment and support services, and statewide standards for management, monitoring, and reporting of information.

~~(10)(7)~~ Include substance alcohol, drug abuse, and mental health services as a component of the integrated service delivery system of the Department of Children and Family Services.

~~(11)(8)~~ Ensure that the districts of the department are the focal point of all substance alcohol, drug abuse, and mental health planning activities, including budget submissions, grant applications, contracts, and other arrangements that can be effected at the district level.

(12)(9) Organize and finance community substance alcohol, drug abuse, and mental health services in local communities throughout the state through locally administered service delivery programs that are based on client outcomes, are programmatically effective, and are financially efficient, and that maximize the involvement of local citizens.

Section 6. Section 394.67, Florida Statutes, is amended to read:

394.67 Definitions.—As used in this part, the term:

~~(1) “Advisory council” means a district advisory council.~~

(1)(2) “Agency” means the Agency for Health Care Administration.

~~(2)(3)~~ “Applicant” means an individual applicant, or any officer, director, agent, managing employee, or affiliated person, or any partner or shareholder having an ownership interest equal to a 5-percent or greater interest in the corporation, partnership, or other business entity.

(3)(4) “Client” means any individual receiving services in any substance alcohol, drug abuse, or mental health facility, program, or service, which facility, program, or service is operated, funded, or regulated by the agency and the department or regulated by the agency.

(4) “Crisis services” means short-term evaluation, stabilization, and brief intervention services provided to a person who is experiencing an acute mental or emotional crisis, as defined in subsection (22), or an acute substance abuse crisis, as defined in subsection (23), to prevent further deterioration of the person’s mental health. Crisis services are provided in settings such as a crisis stabilization unit, an inpatient unit, a short-term residential treatment program, a detoxification facility, or an addictions receiving facility; at the site of the crisis by a mobile crisis response team; or at a hospital on an outpatient basis.

(5) “Crisis stabilization unit” means a program that provides an alternative to inpatient hospitalization and that provides brief, intensive services 24 hours a day, 7 days a week, for mentally ill individuals who are in an acutely disturbed state.

(6) “Department” means the Department of Children and Family Services.

(7) “Director” means any member of the official board of directors reported in the organization’s annual corporate report to the Florida Department of State, or, if no such report is made, any member of the operating board of directors. The term excludes members of separate, restricted boards that serve only in an advisory capacity to the operating board.

(8) “District administrator” means the person appointed by the Secretary of Children and Family Services for the purpose of administering a department service district as set forth in s. 20.19.

(9) “District plan” or “plan” means the combined district substance alcohol, drug abuse, and mental health plan approved by the district administrator and governing bodies in accordance with this part.

(10) “Federal funds” means funds from federal sources for substance alcohol, drug abuse, or mental health facilities and programs, exclusive of federal funds that are deemed eligible by the Federal Government, and are eligible through state regulation, for matching purposes.

(11) “Governing body” means the chief legislative body of a county, a board of county commissioners, or boards of county commissioners in counties acting jointly, or their counterparts in a charter government.

(12) “Health and human services board” or “board” means the board within a district or subdistrict of the department which is established in accordance with s. 20.19 and designated in this part for the purpose of assessing the substance abuse and mental health needs of the community and developing a plan to address those needs.

(13)(12) “Licensed facility” means a facility licensed in accordance with this chapter.

(14)(13) “Local matching funds” means funds received from governing bodies of local government, including city commissions, county commissions, district school boards, special tax districts, private hospital funds, private gifts, both individual and corporate, and bequests and funds received from community drives or any other sources.

(15)(14) “Managing employee” means the administrator or other similarly titled individual who is responsible for the daily operation of the facility.

(16) “Mental health services” means those therapeutic interventions and activities that help to eliminate, reduce, or manage symptoms or distress for persons who have severe emotional distress or a mental illness and to effectively manage the disability that often accompanies a mental illness so that

the person can recover from the mental illness, become appropriately self-sufficient for his or her age, and live in a stable family or in the community. The term also includes those preventive interventions and activities that reduce the risk for or delay the onset of mental disorders. The term includes the following types of services:

(a) Treatment services, such as psychiatric medications and supportive psychotherapies, which are intended to reduce or ameliorate the symptoms of severe distress or mental illness.

(b) Rehabilitative services, which are intended to reduce or eliminate the disability that is associated with mental illness. Rehabilitative services may include assessment of personal goals and strengths, readiness preparation, specific skill training, and assistance in designing environments that enable individuals to maximize their functioning and community participation.

(c) Support services, which include services that assist individuals in living successfully in environments of their choice. Such services may include income supports, social supports, housing supports, vocational supports, or accommodations related to the symptoms or disabilities associated with mental illness.

(d) Case management services, which are intended to assist individuals in obtaining the formal and informal resources that they need to successfully cope with the consequences of their illness. Resources may include treatment or rehabilitative or supportive interventions by both formal and informal providers. Case management may include an assessment of client needs; intervention planning with the client, his or her family, and service providers; linking the client to needed services; monitoring service delivery; evaluating the effect of services and supports; and advocating on behalf of the client.

Mental health services may be delivered in a variety of settings, such as inpatient, residential, partial hospital, day treatment, outpatient, club house, or a drop-in or self-help center, as well as in other community settings, such as the client's residence or workplace. The types and intensity of services provided shall be based on the client's clinical status and goals, community resources, and preferences. Services such as assertive community treatment involve all four types of services which are delivered by a multidisciplinary treatment team that is responsible for identified individuals who have a serious mental illness.

(17)(15) "Patient fees" means compensation received by a community substance alcohol, drug abuse, or mental health facility for services rendered to a specific client clients from any source of funds, including city, county, state, federal, and private sources.

(18) "Person who is experiencing an acute mental or emotional crisis" means a child, adolescent, or adult who is experiencing a psychotic episode or a high level of mental or emotional distress which may be precipitated by a traumatic event or a perceived life problem for which the individual's typical coping strategies are inadequate. The term includes an individual

who meets the criteria for involuntary examination specified in s. 394.463(1).

(19) “Person who is experiencing an acute substance abuse crisis” means a child, adolescent, or adult who is experiencing a medical or emotional crisis because of the use of alcoholic beverages or any psychoactive or mood-altering substance. The term includes an individual who meets the criteria for involuntary admission specified in s. 397.675.

(20)(16) “Premises” means those buildings, beds, and facilities located at the main address of the licensee and all other buildings, beds, and facilities for the provision of acute or residential care which are located in such reasonable proximity to the main address of the licensee as to appear to the public to be under the dominion and control of the licensee.

(21)(17) “Program office” means the Alcohol, Drug Abuse, and Mental Health Program Office of the Department of Children and Family Services.

(22) “Sliding fee scale” means a schedule of fees for identified services delivered by a service provider which are based on a uniform schedule of discounts deducted from the service provider’s usual and customary charges. These charges must be consistent with the prevailing market rates in the community for comparable services.

(23) “Substance abuse services” means services designed to prevent or remediate the consequences of substance abuse, improve an individual’s quality of life and self-sufficiency, and support long-term recovery. The term includes the following service categories:

(a) Prevention services, which include information dissemination; education regarding the consequences of substance abuse; alternative drug-free activities; problem identification; referral of persons to appropriate prevention programs; community-based programs that involve members of local communities in prevention activities; and environmental strategies to review, change, and enforce laws that control the availability of controlled and illegal substances.

(b) Assessment services, which includes the evaluation of individuals and families in order to identify their strengths and determine their required level of care, motivation, and need for treatment and ancillary services.

(c) Intervention services, which include early identification, short-term counseling and referral, and outreach.

(d) Rehabilitation services, which include residential, outpatient, day or night, case management, in-home, psychiatric, and medical treatment, and methadone or medication management.

(e) Ancillary services, which include self-help and other support groups and activities; aftercare provided in a structured, therapeutic environment; supported housing; supported employment; vocational services; and educational services.

~~(24)~~(18) “Residential treatment facility” means a facility providing residential care and treatment to individuals exhibiting symptoms of mental illness who are in need of a 24-hour-per-day, 7-day-a-week structured living environment, respite care, or long-term community placement.

~~(19)~~ “Service district” means a community service district as established by the department under s. 20.19 for the purpose of providing community alcohol, drug abuse, and mental health services.

~~(20)~~ “Service provider” means any agency in which all or any portion of the programs or services set forth in s. 394.675 are carried out.

Section 7. Section 394.674, Florida Statutes, is created to read:

394.674 Clinical eligibility for publicly funded substance abuse and mental health services; fee collection requirements.—

(1) To be eligible to receive substance abuse and mental health services funded by the department, a person must be a member of one of the department’s target groups approved by the Legislature, pursuant to s. 216.0166.

(2) Crisis services, as defined in s. 394.67, must, within the limitations of available state and local matching resources, be available to each person who is eligible for services under subsection (1), regardless of the person’s ability to pay for such services. A person who is experiencing a mental health crisis and who does not meet the criteria for involuntary examination under s. 394.463(1), or a person who is experiencing a substance abuse crisis and who does not meet the involuntary admission criteria in s. 397.675, must contribute to the cost of his or her care and treatment pursuant to the sliding fee scale developed under subsection (4), unless charging a fee is contraindicated because of the crisis situation.

(3) Mental health services, substance abuse services, and crisis services, as defined in s. 394.67, must, within the limitations of available state and local matching resources, be available to each person who is eligible for services under subsection (1). Such person must contribute to the cost of his or her care and treatment pursuant to the sliding fee scale developed under subsection (4).

(4) The department shall adopt rules to implement the clinical eligibility and fee collection requirements for publicly funded substance abuse and mental health services. The rules must require that each provider under contract with the department develop a sliding fee scale for persons who have a net family income at or above 150 percent of the Federal Poverty Income Guidelines, unless otherwise required by state or federal law. The sliding fee scale must use the uniform schedule of discounts by which a provider under contract with the department discounts its established client charges for services supported with state, federal, or local funds, using, at a minimum, factors such as family income, financial assets, and family size as declared by the person or the person’s guardian. The rules must include uniform criteria to be used by all service providers in developing the schedule of discounts for the sliding fee scale. The rules must address the most expensive types of treatment, such as residential and inpatient treatment,

in order to make it possible for a client to responsibly contribute to his or her mental health or substance abuse care without jeopardizing the family's financial stability. A person who is not eligible for Medicaid and whose net family income is less than 150 percent of the Federal Poverty Income Guidelines must pay a portion of his or her treatment costs which is comparable to the copayment amount required by the Medicaid program for Medicaid clients pursuant to s. 409.9081. The rules must require that persons who receive financial assistance from the Federal Government because of a disability and are in long-term residential treatment settings contribute to their board and care costs and treatment costs and must be consistent with the provisions in s. 409.212.

(5) A person who meets the eligibility criteria in subsection (1) shall be served in accordance with the appropriate district substance abuse and mental health services plan specified in s. 394.75 and within available resources.

Section 8. Section 394.675, Florida Statutes, is amended to read:

394.675 Substance Alcohol, drug abuse, and mental health service system.—

(1) A community-based system of comprehensive substance alcohol, drug abuse, and mental health services shall be established and shall include as follows:

(a) Crisis services.

(b) Substance abuse services.

(c) Mental health services.

~~(a) "Primary care services" are those services which, at a minimum, must be made available in each service district to persons who have acute or chronic mental illnesses, who are acute or chronic drug dependents, and who are acute or chronic alcohol abusers to provide them with immediate care and treatment in crisis situations and to prevent further deterioration or exacerbation of their conditions. These services include, but are not limited to, emergency-stabilization services, detoxification services, inpatient services, residential services, and case management services.~~

~~(b) "Rehabilitative services" are those services which are made available to the general population at risk of serious mental health problems or substance abuse problems or which are provided as part of a rehabilitative program. These services are designed to prepare or train persons to function within the limits of their disabilities, to restore previous levels of functioning, or to improve current levels of inadequate functioning. Rehabilitative services include, but are not limited to, outpatient services, day treatment services, and partial hospitalization services.~~

~~(c) "Preventive services" are those services which are made available to the general population for the purpose of preventing or ameliorating the effects of alcohol abuse, drug abuse, or mental illness. These services emphasize the reduction of the occurrence of emotional disorders, mental disorders,~~

~~and substance abuse through public education, early detection, and timely intervention. Preventive services include consultation, public education, and prevention services which have been determined through the district planning process to be necessary to complete a continuum of services as required by this part and which are included in the district plan.~~

(2) Notwithstanding the provisions of this part, funds ~~that which~~ are provided through state and federal sources for specific services or for specific populations shall be used for those purposes.

Section 9. Section 394.676, Florida Statutes, is created to read:

394.676 Indigent psychiatric medication program.—

(1) Within legislative appropriations, the department may establish the indigent psychiatric medication program to purchase psychiatric medications for persons as defined in s. 394.492(5) or (6) or pursuant to s. 394.674(1), who do not reside in a state mental health treatment facility or an inpatient unit.

(2) The department must adopt rules to administer the indigent psychiatric medication program. The rules must prescribe the clinical and financial eligibility of clients who may receive services under the indigent psychiatric medication program, the requirements that community-based mental health providers must meet to participate in the program, and the sanctions to be applied for failure to meet those requirements.

(3) To the extent possible within existing appropriations, the department must ensure that non-Medicaid-eligible indigent individuals discharged from mental health treatment facilities continue to receive the medications which effectively stabilized their mental illness in the treatment facility, or newer medications, without substitution by a service provider unless such substitution is clinically indicated as determined by the licensed physician responsible for such individual's psychiatric care.

Section 10. Section 394.74, Florida Statutes, is amended to read:

394.74 Contracts for provision of local substance alcohol, drug abuse, and mental health programs.—

(1) The department, when funds are available for such purposes, is authorized to contract for the establishment and operation of local substance alcohol, drug abuse, and mental health programs with any hospital, clinic, laboratory, institution, or other appropriate service provider.

(2)(a) Contracts for service shall be consistent with the approved district plan ~~and the service priorities established in s. 394.75(4).~~

(b) Notwithstanding s. 394.76(3)(a) and (c), the department may use unit cost methods of payment in contracts for purchasing mental health and substance abuse services. The unit cost contracting system must account for those patient fees that are paid on behalf of a specific client and those that are earned and used by the provider for those services funded in whole or in part by the department.

(c) The department may reimburse actual expenditures for startup contracts and fixed capital outlay contracts in accordance with contract specifications.

(3) Contracts shall include, but are not limited to:

(a) A provision that, within the limits of available resources, substance primary care alcohol, drug abuse, and mental health crisis services, as defined in s. 394.67(4), shall be available to any individual residing or employed within the service area, regardless of ability to pay for such services, current or past health condition, or any other factor;

(b) A provision that such services be available with priority of attention being given to individuals who exhibit symptoms of chronic or acute substance alcoholism, drug abuse, or mental illness and who are unable to pay the cost of receiving such services;

(c) A provision that every reasonable effort to collect appropriate reimbursement for the cost of providing substance alcohol, drug abuse, and mental health services to persons able to pay for services, including first-party payments and third-party payments, shall be made by facilities providing services pursuant to this act;

(d) A program description and line-item operating budget by program service component for substance alcohol, drug abuse, and mental health services, provided the entire proposed operating budget for the service provider will be displayed; and

(e) A requirement that the contractor must conform to department rules and the priorities established thereunder.

(4) The department shall develop standard contract forms for use between the district administrator and community substance alcohol, drug abuse, and mental health service providers.

(5) ~~Nothing in This part does not prevent~~ prevents any municipality city or county, or combination of municipalities cities and counties, from owning, financing, and operating a substance an alcohol, drug abuse, or mental health program by entering into an arrangement with the district to provide, and be reimbursed for, services provided as part of the district plan.

Section 11. Section 394.75, Florida Statutes, is amended to read:

394.75 State and district substance alcohol, drug abuse, and mental health plans.—

(1)(a) Every 3 years, beginning in 2001, the department, in consultation with the Medicaid program in the Agency for Health Care Administration, shall prepare a state master plan for the delivery and financing of a system of publicly funded, community-based substance abuse and mental health services throughout the state.

(b) The initial plan must include an assessment of the clinical practice guidelines and standards for community-based mental health and substance

abuse services delivered by persons or agencies under contract with the Department of Children and Family Services. The assessment must include an inventory of current clinical guidelines and standards used by persons and agencies under contract with the department, and by nationally recognized accreditation organizations, to address the quality of care and must specify additional clinical practice standards and guidelines for new or existing services and programs.

(c) The plan must propose changes in department policy or statutory revisions to strengthen the quality of mental health and substance abuse treatment and support services.

(d) The plan must identify strategies for meeting the treatment and support needs of children, adolescents, adults, and older adults who have, or are at risk of having, mental, emotional, or substance abuse problems as defined in chapter 394 or chapter 397.

(e) The plan must include input from persons who represent local communities; local government entities that contribute funds to the local substance abuse and mental health treatment systems; consumers of publicly funded substance abuse and mental health services, and their families; and stakeholders interested in mental health and substance abuse services. The plan must describe the means by which this local input occurred. The plan shall be updated annually.

(f) The plan must include statewide policies and planning parameters that will be used by the health and human services boards in preparing the district substance abuse and mental health plans.

(g) The district plans shall be one component of the state master plan.

(2) The state master plan shall also include:

(a) A proposal for the development of a data system that will evaluate the effectiveness of programs and services provided to clients of the substance abuse and mental health service system.

(b) A proposal to resolve the funding discrepancies between districts.

(c) A methodology for the allocation of resources available from federal, state, and local sources and a description of the current level of funding available from each source.

(d) A description of the statewide priorities for clients and services, and each district's priorities for clients and services.

(e) Recommendations for methods of enhancing local participation in the planning, organization, and financing of substance abuse and mental health services.

(f) A description of the current methods of contracting for services, an assessment of the efficiency of these methods in providing accountability for contracted funds, and recommendations for improvements to the system of contracting.

- (g) Recommendations for improving access to services by clients and their families.
- (h) Guidelines and formats for the development of district plans.
- (i) Recommendations for future directions for the substance abuse and mental health service delivery system.

A schedule, format, and procedure for development and review of the state master plan shall be adopted by the department by June of each year. The plan and annual updates must be submitted to the President of the Senate and the Speaker of the House of Representatives by January 1 of each year, beginning January 1, 2001.

(3) The district health and human services board shall prepare an integrated district substance abuse and mental health plan. The plan shall be prepared and updated on a schedule established by the Alcohol, Drug Abuse, and Mental Health Program Office. The plan shall reflect the needs and program priorities established by the department and the needs of the district established under ss. 394.674 and 394.675. The plan must list in order of priority the mental health and the substance abuse treatment needs of the district and must rank each program separately. The plan shall include:

(a) A record of the total amount of money available in the district for mental health and substance abuse services.

(b) A description of each service that will be purchased with state funds.

(c) A record of the amount of money allocated for each service identified in the plan as being purchased with state funds.

(d) A record of the total funds allocated to each provider.

(e) A record of the total funds allocated to each provider by type of service to be purchased with state funds.

(f) Input from community-based persons, organizations, and agencies interested in substance abuse and mental health treatment services; local government entities that contribute funds to the public substance abuse and mental health treatment systems; and consumers of publicly funded substance abuse and mental health services, and their family members. The plan must describe the means by which this local input occurred.

~~(1)(a) The district planning council shall prepare a combined district alcohol, drug abuse, and mental health plan. The plan shall be prepared on a biennial basis and shall be reviewed annually and shall reflect both the program priorities established by the department and the needs of the district. The plan shall include a program description and line-item budget by program service component for alcohol, drug abuse, and mental health service providers that will receive state funds. The entire proposed operating budget for each service provider shall be displayed. A schedule, format, and procedure for development and review of the plan shall be promulgated by the department.~~

~~(b)~~ The plan shall be submitted by the district board planning council to the district administrator and to the governing bodies for review, comment, and approval, ~~as provided in subsection (9)~~.

~~(4)(2)~~ The district plan shall:

(a) Describe the publicly funded, community-based substance abuse and mental health system of care, and identify statutorily defined populations, their service needs, and the resources available and required to meet their needs.

(b) Provide the means for meeting the needs of the district's eligible clients, specified in ss. 394.674 and 394.675, for substance abuse and mental health services.

(c) Provide a process for coordinating the delivery of services within a community-based system of care to eligible clients. Such process must involve service providers, clients, and other stakeholders. The process must also provide a means by which providers will coordinate and cooperate to strengthen linkages, achieve maximum integration of services, foster efficiencies in service delivery and administration, and designate responsibility for outcomes for eligible clients.

~~(d)(a)~~ Provide a projection of district program and fiscal needs for the next fiscal year biennium, provide for the orderly and economical development of needed services, and indicate priorities and resources for each population served, performance outcomes, and anticipated expenditures and revenues.

~~(e)(b)~~ Include a summary budget request for the total district substance alcohol, drug abuse, and mental health program, which must shall include the funding priorities established by the district planning process.

~~(f)(c)~~ Provide a basis for the district legislative budget request.

~~(g)(d)~~ Include a policy and procedure for allocation of funds.

~~(h)(e)~~ Include a procedure for securing local matching funds. Such a procedure shall be developed in consultation with governing bodies and service providers.

~~(i)(f)~~ Provide for the integration of substance alcohol, drug abuse, and mental health services with the other departmental programs and with the criminal justice, juvenile justice, child protection, school, and health care systems ~~system~~ within the district.

~~(j)(g)~~ Provide a plan for the coordination of services in such manner as to ensure effectiveness and avoid duplication, fragmentation of services, and unnecessary expenditures.

~~(k)(h)~~ Provide for continuity of client care between state treatment facilities and community programs to assure that discharge planning results in the rapid application for all benefits for which a client is eligible, including

Medicaid coverage for persons leaving state treatment facilities and returning to community-based programs.

~~(l)(i)~~ Provide for the most appropriate and economical use of all existing public and private agencies and personnel.

~~(m)(j)~~ Provide for the fullest possible and most appropriate participation by existing programs; state hospitals and other hospitals; city, county, and state health and family service agencies; drug abuse and alcoholism programs; probation departments; physicians; psychologists; social workers; marriage and family therapists; mental health counselors; clinical social workers; public health nurses; school systems; and all other public and private agencies and personnel that which are required to, or may agree to, participate in the plan.

~~(n)(k)~~ Include an inventory of all public and private substance alcohol, drug abuse, and mental health resources within the district, including consumer advocacy groups and self-help groups known to registered with the department.

~~(5)(3)~~ The district plan shall address how substance abuse and mental health primary care services will be provided and how a system of care for target populations continuum of services will be provided given the resources available in the service district. The plan must include provisions for maximizing client access to the most recently developed psychiatric medications approved by the United States Food and Drug Administration, for developing independent housing units through participation in the Section 811 program operated by the United States Department of Housing and Urban Development, for developing supported employment services through the Division of Vocational Rehabilitation of the Department of Labor and Employment Security, for providing treatment services to persons with co-occurring mental illness and substance abuse problems which are integrated across treatment systems, and for providing services to adults who have a serious mental illness, as defined in s. 394.67, and who reside in assisted-living facilities.

~~(6)(4)~~ The district plan shall provide the means by which the needs of the following population groups specified pursuant to s. 394.674 having priority will be addressed in the district.:

- ~~(a) — Chronic public inebriates;~~
- ~~(b) — Marginally functional alcoholics;~~
- ~~(c) — Chronic opiate abusers;~~
- ~~(d) — Poly-drug abusers;~~
- ~~(e) — Chronically mentally ill individuals;~~
- ~~(f) — Acutely mentally ill individuals;~~
- ~~(g) — Severely emotionally disturbed children and adolescents;~~

~~(h) Elderly persons at high risk of institutionalization; and~~

~~(i) Individuals returned to the community from a state mental health treatment facility.~~

(7)(5) In developing the district plan, optimum use shall be made of any federal, state, and local funds that may be available for substance alcohol, drug abuse, and mental health service planning. However, the department must provide these services within legislative appropriations.

(8)(6) The district health and human services board planning council shall establish a subcommittee to prepare the portion of the district plan relating to children and adolescents. The subcommittee shall include representative membership of any committee organized or established by the district to review placement of children and adolescents in residential treatment programs. The board shall establish a subcommittee to prepare the portion of the district plan which relates to adult mental health and substance abuse. The subcommittee must include representatives from the community who have an interest in mental health and substance abuse treatment for adults.

(9)(7) All departments of state government and all local public agencies shall cooperate with officials to assist them in service planning. Each district administrator shall, upon request and the availability of staff, provide consultative services to the local agency directors and governing bodies.

(10)(8) The district administrator shall ensure that the district plan:

(a) Conforms to the priorities in the state plan, the requirements of this part, and the standards adopted under this part;

(b) Ensures that the most effective and economical use will be made of available public and private substance alcohol, drug abuse, and mental health resources in the service district; and

(c) Has adequate provisions made for review and evaluation of the services provided in the service district.

(11)(9) The district administrator shall require such modifications in the district plan as he or she deems necessary to bring the plan into conformance with the provisions of this part. If the district ~~board planning council~~ and the district administrator cannot agree on the plan, including the projected budget, the issues under dispute shall be submitted directly to the secretary of the department for immediate resolution.

(12)(40) Each governing body that provides local funds has the authority to require necessary modification to only that portion of the district plan which affects substance alcohol, drug abuse, and mental health programs and services within the jurisdiction of that governing body.

(13)(14) The district administrator shall report annually to the district ~~board planning council~~ the status of funding for priorities established in the district plan. Each report must include:

- (a) A description of the district plan priorities that were included in the district legislative budget request.;
- (b) A description of the district plan priorities that were included in the departmental budget request prepared under s. 20.19.;
- (c) A description of the programs and services included in the district plan priorities that were appropriated funds by the Legislature in the legislative session that preceded the report.

Section 12. Subsection (3) of section 394.4574, Florida Statutes, is amended to read:

394.4574 Department responsibilities for a mental health resident who resides in an assisted living facility that holds a limited mental health license.—

(3) The Secretary of Children and Family Services, in consultation with the Agency for Health Care Administration, shall annually require each district administrator to develop, with community input, detailed plans that demonstrate how the district will ensure the provision of state-funded mental health and substance abuse treatment services to residents of assisted living facilities that hold a limited mental health license. These plans must be consistent with the substance alcohol, drug abuse, and mental health district plan developed pursuant to s. 394.75 and must address case management services; access to consumer-operated drop-in centers; access to services during evenings, weekends, and holidays; supervision of the clinical needs of the residents; and access to emergency psychiatric care.

Section 13. Subsections (3), (4), (8), (9), (10), and (11) of section 394.76, Florida Statutes, are amended to read:

394.76 Financing of district programs and services.—If the local match funding level is not provided in the General Appropriations Act or the substantive bill implementing the General Appropriations Act, such funding level shall be provided as follows:

(3) The state share of financial participation shall be determined by the following formula:

(a) The state share of approved program costs shall be a percentage of the net balance determined by deducting from the total operating cost of services and programs, as specified in s. 394.675(1), those expenditures which are ineligible for state participation as provided in subsection (7) and those ineligible expenditures established by rule of the department pursuant to s. 394.78.

(b) Residential and case management services which are funded as part of a deinstitutionalization project shall not require local matching funds and shall not be used as local matching funds. The state and federal financial participation portions of Medicaid earnings pursuant to Title XIX of the Social Security Act, except for the amount of general revenue equal to the amount appropriated in 1985-1986 plus all other general revenue that is

shifted from any other alcohol, drug abuse, and mental health appropriation category after fiscal year 1986-1987 or substance abuse and mental health appropriation category after fiscal year 2000-2001, shall not require local matching funds and shall not be used as local matching funds. Local matching funds are not required for general revenue transferred by the department into ~~substance alcohol, drug abuse, and mental health appropriations~~ categories during a fiscal year to match federal funds earned from Medicaid services provided for mental health clients in excess of the amounts initially appropriated. Funds for children's services which were provided through the Children, Youth, and Families Services budget which did not require local match prior to being transferred to the Substance Alcohol, Drug Abuse, and Mental Health Services budget shall be exempt from local matching requirements. All other contracted community alcohol and mental health services and programs, except as identified in s. 394.457(3), shall require local participation on a 75-to-25 state-to-local ratio.

(c) The expenditure of 100 percent of all third-party payments and fees shall be considered as eligible for state financial participation if such expenditures are in accordance with subsection (7) and the approved district plan.

(d) Fees generated by residential and case management services which are funded as part of a deinstitutionalization program and do not require local matching funds shall be used to support program costs approved in the district plan.

(e) Any earnings pursuant to Title XIX of the Social Security Act in excess of the amount appropriated shall be used to support program costs approved in the district plan.

(4) Notwithstanding the provisions of subsection (3), the department is authorized to develop and demonstrate alternative financing systems for ~~substance alcohol, drug abuse, and mental health services~~. Proposals for demonstration projects conducted pursuant to this subsection shall be reviewed by the substantive and appropriations committees of the Senate and the House of Representatives prior to implementation of the projects.

(8) Expenditures for capital improvements relating to construction of, addition to, purchase of, or renovation of a community ~~substance alcohol, drug abuse, or mental health facility~~ may be made by the state, provided such expenditures or capital improvements are part and parcel of an approved district plan. Nothing shall prohibit the use of such expenditures for the construction of, addition to, renovation of, or purchase of facilities owned by a county, city, or other governmental agency of the state or a nonprofit entity. Such expenditures are subject to the provisions of subsection (6).

(9)(a) State funds for community alcohol and mental health services shall be matched by local matching funds as provided in paragraph (3)(b). The governing bodies within a district or subdistrict shall be required to participate in the funding of alcohol and mental health services under the jurisdiction of such governing bodies. The amount of the participation shall be at least that amount which, when added to other available local matching funds, is necessary to match state funds.

(b) The provisions of paragraph (a) to the contrary notwithstanding, no additional matching funds may be required solely due to the addition in the General Appropriations Act of Substance Alcohol, Drug Abuse, and Mental Health Block Grant Funds for local community mental health centers and alcohol project grants.

(10) A local governing body is authorized to appropriate moneys, in lump sum or otherwise, from its public funds for the purpose of carrying out the provisions of this part. In addition to the payment of claims upon submission of proper vouchers, such moneys may also, at the option of the governing body, be disbursed in the form of a lump-sum or advance payment for services for expenditure, in turn, by the recipient of the disbursement without prior audit by the auditor of the governing body. Such funds shall be expended only for substance alcohol, drug abuse, or mental health purposes as provided in the approved district plan. Each governing body appropriating and disbursing moneys pursuant to this subsection shall require the expenditure of such moneys by the recipient of the disbursement to be audited annually either in conjunction with an audit of other expenditures or by a separate audit. Such annual audits shall be furnished to the governing bodies of each participating county and municipality for their examination.

(11) No additional local matching funds shall be required solely due to the addition in the General Appropriations Act of substance alcohol, drug abuse, and mental health block grant funds for local community mental health centers, drug abuse programs, and alcohol project grants.

Section 14. Subsection (1) of section 394.77, Florida Statutes, is amended to read:

394.77 Uniform management information, accounting, and reporting systems for providers.—The department shall establish, for the purposes of control of costs:

(1) A uniform management information system and fiscal accounting system for use by providers of community substance alcohol, drug abuse, and mental health services.

Section 15. Subsections (2), (3), (4), and (5) of section 394.78, Florida Statutes, are amended to read:

394.78 Operation and administration; personnel standards; procedures for audit and monitoring of service providers; resolution of disputes.—

(2) The department shall, by rule, establish standards of education and experience for professional and technical personnel employed in substance alcohol, drug abuse, and mental health programs.

(3) The department shall establish, to the extent possible, a standardized auditing procedure for substance alcohol, drug abuse, and mental health service providers; and audits of service providers shall be conducted pursuant to such procedure and the applicable department rules. Such procedure shall be supplied to all current and prospective contractors and subcontractors prior to the signing of any contracts.

(4) The department shall monitor service providers for compliance with contracts and applicable state and federal regulations. A representative of the district health and human services board planning council shall be represented on the monitoring team.

(5) In unresolved disputes regarding this part or rules established pursuant to this part, providers and district health and human services boards planning councils shall adhere to formal procedures specified under s. 20.19(8)(n) as provided by the rules established by the department.

Section 16. Section 394.908, Florida Statutes, is amended to read:

394.908 Substance Alcohol, drug abuse, and mental health funding equity; distribution of appropriations.—In recognition of the historical inequity among service districts of the former Department of Health and Rehabilitative Services in the funding of substance alcohol, drug abuse, and mental health services, and in order to rectify this inequity and provide for equitable funding in the future throughout the state, the following funding process shall be adhered to, beginning with the 1997-1998 fiscal year:

(1) Funding thresholds for substance alcohol, drug abuse, and mental health services in each of the current districts, statewide, shall be established based on the current number of persons in need per district of substance for alcohol and drug abuse, and for mental health services, respectively.

(2) “Persons in need” means those persons who fit the profile of the respective target populations and require mental health or substance abuse services.

(3) Seventy-five Beginning July 1, 1997, 75 percent of any additional funding beyond the 1996-1997 fiscal year base appropriation for alcohol, drug abuse, and mental health services shall be allocated to districts for substance abuse and mental health services based on:

(a) Epidemiological estimates of disabilities which apply to the respective target populations.

(b) A pro rata share distribution that ensures districts below the statewide average funding level per person in each target population of “persons in need” receive funding necessary to achieve equity.

(4) The remaining 25 percent shall be allocated based on the number of persons in need of substance alcohol, drug abuse, and mental health services per district without regard to current funding levels.

(5) Target populations for persons in need shall be displayed for each district and distributed concurrently with the approved operating budget. The display by target population shall show: The annual number of persons served based on prior year actual numbers, the annual cost per person served, the number of persons served by service cost center, and the estimated number of the total target population for persons in need.

(6) The annual cost per person served shall be defined as the total actual funding for each target population divided by the number of persons served in the target population for that year.

(7) Commencing on July 1, 1998, all additional funding pursuant to this section shall be performance-based.

Section 17. Subsection (2) of section 397.321, Florida Statutes, is amended to read:

397.321 Duties of the department.—The department shall:

(2) Ensure that a plan for substance abuse services is developed at the district level in accordance with the provisions of part IV of chapter 394, ~~and the state plan pursuant to s. 394.79.~~

Section 18. By November 1 of each year, the Department of Children and Family Services shall submit a report to the President of the Senate and the Speaker of the House of Representatives which describes the compliance of providers that provide substance abuse treatment programs and mental health services under contract with the Department of Children and Family Services. The report must describe the status of compliance with the annual performance outcome standards established by the Legislature and must address the providers that meet or exceed performance standards, the providers that did not achieve performance standards for which corrective action measures were developed, and the providers whose contracts were terminated due to failure to meet the requirements of the corrective plan.

Section 19. The Commission on Mental Health and Substance Abuse is directed to study and make recommendations regarding who should receive publicly funded mental health and substance abuse services. The commission shall submit its recommendations to the President of the Senate, the Speaker of the House of Representatives, and the majority and minority leaders of each chamber no later than December 1, 2000.

Section 20. Target groups.—The Department of Children and Family Services shall revise its target groups for substance abuse and mental health services approved pursuant to s. 216.0166, Florida Statutes, to include “older adults in crisis,” “older adults who are at risk of being placed in a more restrictive environment because of their mental illness or substance abuse,” “older adults with severe and persistent mental illness,” and “older adults in need of substance abuse treatment.” The department shall track and report specifically on substance abuse and mental health services provided to older adults.

Section 21. Section 394.79, Florida Statutes, is repealed.

Section 22. Subsection (3) of section 400.6065, Florida Statutes, is amended, and subsections (4) through (8) are added to said section, to read:

400.6065 Background screening.—

(3) The agency may grant a provisional license to a hospice applying for an initial license when each individual required by this section to undergo

screening has completed the ~~abuse registry and~~ Department of Law Enforcement background check checks, but has not yet received results from the Federal Bureau of Investigation.

(4) The agency shall require employment or contractor screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for hospice personnel.

(5) The agency may grant exemptions from disqualification from employment under this section as provided in s. 435.07.

(6) The administration of each hospice must sign an affidavit annually, under penalty of perjury, stating that all personnel employed or contracted with on or after October 1, 1998, who provide hospice services in a facility, or who enter the home of a patient in their service capacity, have been screened.

(7) Proof of compliance with the screening requirements of chapter 435 shall be accepted in lieu of the requirements of this section if the person has been continuously employed or registered without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened, at the discretion of the hospice.

(8)(a) It is a misdemeanor of the first degree, punishable under s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications to be employed or contracted with under this section;

2. Operate or attempt to operate an entity licensed under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or

3. Use information from the criminal records obtained under this section for any purpose other than screening as specified in this section, or release such information to any other person for any purpose other than screening under this section.

(b) It is a felony of the third degree, punishable under s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under this section for any purpose other than screening for employment under this section.

Section 23. Part XII of chapter 400, Florida Statutes, consisting of s. 400.980, Florida Statutes, is created, entitled "Health Care Services Pools."

Section 24. Section 402.48, Florida Statutes, is renumbered as section 400.980, Florida Statutes, and amended to read:

400.980~~402.48~~ Health care services pools.—

(1) As used in this section, the term:

(a) “Agency” means the Agency for Health Care Administration. “Department” means the Department of Health.

(b) “Health care services pool” means any person, firm, corporation, partnership, or association engaged for hire in the business of providing temporary employment in health care facilities, residential facilities, and agencies for licensed, certified, or trained health care personnel including, without limitation, nursing assistants, nurses’ aides, and orderlies. However, the term does not include nursing registries, a facility licensed under chapter 400, a health care services pool established within a health care facility to provide services only within the confines of such facility, or any individual contractor directly providing temporary services to a health care facility without use or benefit of a contracting agent.

(2) Each person who operates a health care services pool must register each separate business location with the agency department. The agency department shall adopt rules and provide forms required for such registration and shall impose a registration fee in an amount sufficient to cover the cost of administering this section. In addition, the registrant must provide the agency department with any change of information contained on the original registration application within 14 days prior to ~~after~~ the change. The agency department may inspect the offices of any health care services pool at any reasonable time for the purpose of determining compliance with this section or the rules adopted under this section.

(3) Each application for registration must include:

(a) The name and address of any person who has an ownership interest in the business, and, in the case of a corporate owner, copies of the articles of incorporation, bylaws, and names and addresses of all officers and directors of the corporation.

(b) Any other information required by the agency department.

(4) Each applicant for registration must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 1 standards for screening set forth in chapter 435, of every individual who will have contact with patients. The agency shall require background screening of the managing employee or other similarly titled individual who is responsible for the operation of the entity, and of the financial officer or other similarly titled individual who is responsible for the financial operation of the entity, including billings for services in accordance with the level 2 standards for background screening as set forth in chapter 435.

(b) The agency may require background screening of any other individual who is affiliated with the applicant if the agency has a reasonable basis for believing that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care or assisted living licensure requirements of this state is acceptable in fulfillment of paragraph (a).

(d) A provisional registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the Department of Law Enforcement background check but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard registration may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and if a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(e) Each applicant must submit to the agency, with its application, a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and controlling interests under the Medicaid or Medicare programs may be accepted in lieu of this submission.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 which was committed by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization who serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation's or organization's board of directors, and has no financial interest and no family members having a financial interest in the corporation or organization, if the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A registration may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

(h) The provisions of this section which require an applicant for registration to undergo background screening shall stand repealed on June 30, 2001,

unless reviewed and saved from repeal through reenactment by the Legislature.

(i) Failure to provide all required documentation within 30 days after a written request from the agency will result in denial of the application for registration.

(j) The agency must take final action on an application for registration within 60 days after receipt of all required documentation.

(k) The agency may deny, revoke, or suspend the registration of any applicant or registrant who:

1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or

2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).

3. Fails to comply with this section or applicable rules.

4. Commits an intentional, reckless, or negligent act that materially affects the health or safety of a person receiving services.

(5) It is a misdemeanor of the first degree, punishable under s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(a) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to an applicant's qualifications to be a contractor under this section;

(b) Operate or attempt to operate an entity registered under this part with persons who do not meet the minimum standards of chapter 435 as contained in this section; or

(c) Use information from the criminal records obtained under this section for any purpose other than screening an applicant for temporary employment as specified in this section, or release such information to any other person for any purpose other than screening for employment under this section.

(6) It is a felony of the third degree, punishable under s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of a person obtained under this section for any purpose other than screening for employment under this section.

(7) It is unlawful for a person to offer or advertise services, as defined by rule, to the public without obtaining a certificate of registration from the Agency for Health Care Administration. It is unlawful for any holder of a certificate of registration to advertise or hold out to the public that he or she holds a certificate of registration for other than that for which he or she

actually holds a certificate of registration. Any person who violates this subsection is subject to injunctive proceedings under s. 400.515.

(8)(4) Each registration shall be for a period of 2 years. The application for renewal must be received by the agency department at least ~~30~~ 20 days before the expiration date of the registration. An application for a new registration is required within 30 days prior to upon the sale of a controlling interest in a health care services pool.

(9)(5) A health care services pool may not require an employee to recruit new employees from persons employed at a health care facility to which the health care services pool employee is assigned. Nor shall a health care facility to which employees of a health care services pool are assigned recruit new employees from the health care services pool.

(10)(6) A health care services pool shall document that each temporary employee provided to a health care facility ~~is licensed and has met the licensing, certification, training, or and~~ continuing education requirements, as established by the appropriate regulatory agency, for the position in which he or she will be working.

(11)(7) When referring persons for temporary employment in health care facilities, a health care services pool shall comply with all pertinent state and federal laws, rules, and regulations of the appropriate regulatory agency relating to health, background screening, and other qualifications required of persons working in a facility of that type of personnel employed in health care facilities.

(12)(8)(a) As a condition of registration and prior to the issuance or renewal of a certificate of registration, a health care services pool applicant must prove financial responsibility to pay claims, and costs ancillary thereto, arising out of the rendering of services or failure to render services by the pool or by its employees in the course of their employment with the pool. ~~The agency department~~ shall promulgate rules establishing minimum financial responsibility coverage amounts which shall be adequate to pay potential claims and costs ancillary thereto.

(b) Each health care services pool shall give written notification to the ~~agency department~~ within 20 days after any change in the method of assuring financial responsibility or upon cancellation or nonrenewal of professional liability insurance. Unless the pool demonstrates that it is otherwise in compliance with the requirements of this section, the ~~agency department~~ shall suspend the registration license of the pool pursuant to ss. 120.569 and 120.57. Any suspension under this section shall remain in effect until the pool demonstrates compliance with the requirements of this section.

(c) Proof of financial responsibility must be demonstrated to the satisfaction of the ~~agency department~~, through one of the following methods:

1. Establishing and maintaining an escrow account consisting of cash or assets eligible for deposit in accordance with s. 625.52;

2. Obtaining and maintaining an unexpired irrevocable letter of credit established pursuant to chapter 675. Such letters of credit shall be nontrans-

ferable and nonassignable and shall be issued by any bank or savings association organized and existing under the laws of this state or any bank or savings association organized under the laws of the United States that has its principal place of business in this state or has a branch office which is authorized under the laws of this state or of the United States to receive deposits in this state; or

3. Obtaining and maintaining professional liability coverage from one of the following:

- a. An authorized insurer as defined under s. 624.09;
- b. An eligible surplus lines insurer as defined under s. 626.918(2);
- c. A risk retention group or purchasing group as defined under s. 627.942; or
- d. A plan of self-insurance as provided in s. 627.357.

(d) If financial responsibility requirements are met by maintaining an escrow account or letter of credit, as provided in this section, upon the entry of an adverse final judgment arising from a medical malpractice arbitration award from a claim of medical malpractice either in contract or tort, or from noncompliance with the terms of a settlement agreement arising from a claim of medical malpractice either in contract or tort, the financial institution holding the escrow account or the letter of credit shall pay directly to the claimant the entire amount of the judgment together with all accrued interest or the amount maintained in the escrow account or letter of credit as required by this section, whichever is less, within 60 days after the date such judgment became final and subject to execution, unless otherwise mutually agreed to in writing by the parties. If timely payment is not made, the agency department shall suspend the registration license of the pool pursuant to procedures set forth by the department through rule. Nothing in this paragraph shall abrogate a judgment debtor's obligation to satisfy the entire amount of any judgment.

(e) Each health care services pool carrying claims-made coverage must demonstrate proof of extended reporting coverage through either tail or nose coverage, in the event the policy is canceled, replaced, or not renewed. Such extended coverage shall provide coverage for incidents that occurred during the claims-made policy period but were reported after the policy period.

(f) The financial responsibility requirements of this section shall apply to claims for incidents that occur on or after January 1, 1991, or the initial date of registration in this state, whichever is later.

(g) Meeting the financial responsibility requirements of this section must be established at the time of issuance or renewal of a certificate of registration.

(13)(9) The agency department shall adopt rules to implement this section, including rules providing for the establishment of:

(a) Minimum standards for the operation and administration of health care personnel pools, including procedures for recordkeeping and personnel.

(b) Fines for the violation of this section in an amount not to exceed ~~\$2,500~~ \$1,000 and suspension or revocation of registration.

(c) Disciplinary sanctions for failure to comply with this section or the rules adopted under this section.

Section 25. All powers, duties and functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds of the Department of Health relating to the regulation of health care services pools are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Health to the Agency for Health Care Administration.

Section 26. Section 415.102, Florida Statutes, is amended to read:

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(1) “Abuse” means any willful act or threatened act that causes or is likely to cause significant impairment to a vulnerable adult’s physical, mental, or emotional health. Abuse includes acts and omissions. “Abuse” means the nonaccidental infliction of physical or psychological injury or sexual abuse upon a disabled adult or an elderly person by a relative, caregiver, or household member, or an action by any of those persons which could reasonably be expected to result in physical or psychological injury, or sexual abuse of a disabled adult or an elderly person by any person. “Abuse” also means the active encouragement of any person by a relative, caregiver, or household member to commit an act that inflicts or could reasonably be expected to result in physical or psychological injury to a disabled adult or an elderly person.

(2) “Alleged perpetrator” means a person who has been named by a reporter as the person responsible for abusing, neglecting, or exploiting a vulnerable disabled adult or an elderly person. “Alleged perpetrator” also means a person who has been named by an adult protective investigator, in a report that has been classified as proposed confirmed, as the person responsible for abusing, neglecting, or exploiting a disabled adult or an elderly person.

(3) “Capacity to consent” means that a vulnerable disabled adult or elderly person has sufficient understanding to make and communicate responsible decisions regarding the vulnerable disabled adult’s or elderly person’s person or property, including whether or not to accept protective services offered by the department.

(4) “Caregiver” means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable disabled adult or an elderly person on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person’s guardian that a caregiver role exists. “Caregiver”

includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (8) (13). For the purpose of departmental investigative jurisdiction, the term “caregiver” does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in an official capacity.

(5) ~~“Closed without classification” means the closure of a report in which an adult protective investigator determines that:~~

(a) ~~Some evidence exists that abuse, neglect, or exploitation has occurred, but a preponderance of evidence cannot be established; or~~

(b) ~~A preponderance of the evidence exists that abuse, neglect, or exploitation has occurred, but no perpetrator can be identified.~~

(6) ~~“Confirmed report” means a proposed confirmed report that has been determined to be valid after a hearing under s. 415.1075(2), a proposed confirmed report for which the alleged perpetrator has failed to request amendment or expunction within the time allotted for such a request under s. 415.1075(1), or a proposed confirmed report for which the alleged perpetrator has failed to request an administrative hearing within the time allotted by s. 415.1075(2).~~

(7) ~~“Criminal justice agency” means any court, any law enforcement agency, or any government agency or subunit thereof as defined under s. 943.045(10).~~

(5)(8) ~~“Deception” means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a vulnerable disabled adult or an elderly person.~~

(6)(9) ~~“Department” means the Department of Children and Family Services.~~

(10) ~~“Disabled adult” means a person 18 years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, or who has one or more physical or mental limitations that substantially restrict the ability to perform the normal activities of daily living.~~

(11) ~~“Disabled adult in need of services” means a disabled adult who has been determined by an adult protective services investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.~~

(12) ~~“Elderly person” means a person 60 years of age or older who is suffering from the infirmities of aging as manifested by advanced age or organic brain damage, or other physical, mental, or emotional dysfunctioning to the extent that the ability of the person to provide adequately for the person’s own care or protection is impaired.~~

~~(13) “Elderly person in need of services” means an elderly person who has been determined by an adult protective services investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.~~

~~(7)~~(14)(a) “Exploitation” means a person who:

1. Stands in a position of trust and confidence with a vulnerable disabled adult ~~or an elderly person~~ and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable disabled adult’s ~~or an elderly person’s~~ funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable disabled adult ~~or an elderly person~~ of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable disabled adult ~~or elderly person~~; or

2. Knows or should know that the vulnerable disabled adult ~~or elderly person~~ lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable disabled adult’s ~~or elderly person’s~~ funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable disabled adult ~~or elderly person~~ of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable disabled adult ~~or elderly person~~.

(b) “Exploitation” may include, but is not limited to:

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;

2. Unauthorized taking of personal assets;

3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable disabled adult ~~or elderly person~~ from a personal or joint account; or

4. Intentional or negligent failure to effectively use a vulnerable disabled adult’s ~~or elderly person’s~~ income and assets for the necessities required for that person’s support and maintenance.

~~(8)~~(15) “Facility” means any location providing day or residential care or treatment for vulnerable disabled adults ~~or elderly persons~~. The term “facility” may include, but is not limited to, any hospital, ~~training center~~, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, group home, or mental health treatment center.

~~(9)~~(16) “False report” means a report of abuse, neglect, or exploitation of a vulnerable disabled adult ~~or an elderly person~~ to the central abuse hotline registry and tracking system which is not true unfounded and is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a vulnerable disabled adult ~~or an elderly person~~; or

(d) Personal benefit for the reporting person in any other private dispute involving a vulnerable disabled adult ~~or an elderly person~~.

The term “false report” does not include a report of abuse, neglect, or exploitation of a vulnerable disabled adult ~~or an elderly person~~ which is made in good faith to the central abuse hotline registry and tracking system ~~and which is classified as unfounded at the conclusion of the investigation~~.

~~(10)~~⁽¹⁷⁾ “Fiduciary relationship” means a relationship based upon the trust and confidence of the vulnerable disabled adult ~~or elderly person~~ in the caregiver, relative, household member, or other person entrusted with the use or management of the property or assets of the vulnerable disabled adult ~~or elderly person~~. The relationship exists where there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the vulnerable disabled adult ~~or elderly person~~. For the purposes of this part, a fiduciary relationship may be formed by an informal agreement between the vulnerable disabled adult ~~or elderly person~~ and the other person and does not require a formal declaration or court order for its existence. A fiduciary relationship includes, but is not limited to, court-appointed or voluntary guardians, trustees, attorneys, or conservators of a vulnerable disabled adult’s ~~or an elderly person’s~~ assets or property.

~~(11)~~⁽¹⁸⁾ “Guardian” means a person who has been appointed by a court to act on behalf of a person; a preneed guardian, as provided in chapter 744; or a health care surrogate expressly designated ~~by a principal to make health care decisions on behalf of the principal upon the principal’s incapacity~~, as provided in chapter 765.

~~(12)~~⁽¹⁹⁾ “In-home services” means the provision of nursing, personal care, supervision, or other services to vulnerable disabled adults ~~or elderly persons~~ in their own homes.

~~(13)~~⁽²⁰⁾ “Intimidation” means the communication by word or act to a vulnerable disabled adult ~~or an elderly person~~ that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

~~(14)~~⁽²¹⁾ “Lacks capacity to consent” means a mental impairment that causes a vulnerable disabled adult ~~or an elderly person~~ to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the ~~disabled adult’s or elderly person’s~~ person or property, including whether or not to accept protective services ~~offered by the department~~.

~~(15)~~⁽²²⁾ “Neglect” means the failure or omission on the part of the caregiver ~~or disabled adult or elderly person~~ to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable disabled adult ~~or elderly person~~, including, but not limited to, food,

clothing, medicine, shelter, supervision, and medical services, that a prudent person would consider essential for the well-being of a vulnerable disabled adult or an elderly person. The term “neglect” also means the failure of a caregiver to make a reasonable effort to protect a vulnerable disabled adult or an elderly person from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

~~(23) “No jurisdiction” means the disposition of a report that the department does not investigate because the report does not meet the criteria specified in ss. 415.101-415.113.~~

~~(16)~~(24) “Obtains or uses” means any manner of:

- (a) Taking or exercising control over property; or
- (b) Making any use, disposition, or transfer of property;

(c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise; or

(d)1. Conduct otherwise known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or

2. Other conduct similar in nature.

~~(25) “Perpetrator” means the person who has been named as causing abuse, neglect, or exploitation of a disabled adult or an elderly person in a report that has been classified as confirmed.~~

~~(17)~~(26) “Position of trust and confidence” with respect to a vulnerable disabled adult or an elderly person means the position of a person who:

(a) Is a parent, spouse, adult child, or other relative by blood or marriage ~~of the disabled adult or elderly person;~~

(b) Is a joint tenant or tenant in common ~~with the disabled adult or elderly person;~~

(c) Has a legal or fiduciary relationship ~~with the disabled adult or elderly person~~, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(d) Is a caregiver ~~of the disabled adult or elderly person~~ or any other person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable elderly person’s or disabled adult’s funds, assets, or property.

(18) “Protective investigation” means acceptance of a report from the central abuse hotline alleging abuse, neglect, or exploitation as defined in this section; investigation of the report; determination as to whether action by the court is warranted; and referral of the vulnerable adult to another public or private agency when appropriate.

(27) —“Property” means anything of value, and includes:

(a) ~~Real property, including things growing on, affixed to, and found in land.~~

(b) ~~Tangible personal property, including, but not limited to, furniture, jewelry, or clothing and intangible personal property, including rights, privileges, interests, and claims.~~

~~(28) —“Proposed confirmed report” means a report of abuse, neglect, or exploitation which is made pursuant to s. 415.1034 when an adult protective investigation alleges that there is a preponderance of evidence that abuse, neglect, or exploitation occurred and which identifies the alleged perpetrator.~~

~~(19)(29) “Protective investigator” means an authorized agent of the department who receives and investigates reports of abuse, neglect, or exploitation of vulnerable adults. “Protective investigator” means an employee of the department responsible for:~~

~~(a) The onsite investigation, classification, and disposition of all reports alleging abuse, neglect, or exploitation of a disabled adult or an elderly person;~~

~~(b) The determination of immediate risk to a disabled adult or an elderly person, which determination must include the provision of emergency services and the arrangement for immediate in-home and nonemergency services to prevent the recurrence of further abuse, neglect, or exploitation; and~~

~~(c) The evaluation of the need for and referrals to ongoing protective services for a disabled adult or an elderly person.~~

~~(20)(30) “Protective services” means the provision or arrangement of services to protect a vulnerable disabled adult or an elderly person from further occurrences of abuse, neglect, or exploitation. Such services may include, but are not limited to, protective supervision, placement, and in-home and community-based services.~~

~~(21)(31) “Protective supervision” means those services arranged for or implemented by the department to protect vulnerable disabled adults or elderly persons from further occurrences of abuse, neglect, or exploitation during an investigation or following a report that has been classified as proposed confirmed or confirmed, or has been closed without classification.~~

~~(22)(32) “Psychological injury” means an injury to the intellectual functioning or emotional state of a vulnerable disabled adult or an elderly person as evidenced by an observable or measurable reduction in the vulnerable disabled adult’s or elderly person’s ability to function within that person’s customary range of performance and that person’s behavior.~~

~~(23)(33) “Records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, videotapes, or other material, regardless of physical form or characteristics, made or received pursuant to a an adult protective investigation.~~

~~(24)~~(34) “Sexual abuse” means acts of a sexual nature committed for the sexual gratification of the abuser and in the presence of a vulnerable disabled adult or an elderly person without that person’s informed consent. “Sexual abuse” includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable disabled adult’s or elderly person’s sexual organs, or the use of a vulnerable disabled adult or an elderly person to solicit for or engage in prostitution or sexual performance. “Sexual abuse” does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

~~(35)~~—“Specified medical personnel” means licensed or certified physicians, osteopathic physicians, nurses, paramedics, advanced registered nurse practitioners, psychologists, psychiatrists, mental health professionals, or any other licensed or certified medical personnel.

~~(36)~~—“Unfounded report” means a report made pursuant to s. 415.1034 in which the department determines that no evidence of abuse, neglect, or exploitation exists.

~~(25)~~(37) “Victim” means any vulnerable disabled adult or elderly person named in a report of abuse, neglect, or exploitation.

~~(26)~~ “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, physical, or developmental disability or dysfunctioning, or brain damage, or the infirmities of aging.

~~(27)~~ “Vulnerable adult in need of services” means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

Section 27. Section 415.103, Florida Statutes, is amended to read:

415.103 Central abuse hotline registry and tracking system.—

(1) The department shall establish and maintain a central abuse hotline registry and tracking system that receives all reports made pursuant to s. 415.1034 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report known or suspected abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person at any hour of the day or night, any day of the week. The central abuse hotline registry and tracking system must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable disabled adult or an elderly person has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable disabled adult or ~~an elderly person~~ to other organizations that might better resolve the reporter's concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline registry and tracking system.

(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation of ~~disabled adults or elderly persons~~.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable disabled adults or ~~elderly persons~~ who have been subject to abuse, neglect, or exploitation.

(2) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable disabled adult or ~~an elderly person~~, the central abuse hotline registry and tracking system must determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline registry and tracking system must immediately notify the department's designated adult protective investigative district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline registry and tracking system must notify the department's designated adult protective investigative district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. At the time of notification of district staff with respect to the report, the central abuse hotline registry and tracking system must also provide any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

(3) The department shall set standards, priorities, and policies to maximize the efficiency and effectiveness of the central abuse hotline registry and tracking system.

Section 28. Section 415.1034, Florida Statutes, is amended to read:

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable disabled adults or ~~elderly persons~~; mandatory reports of death.—

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable disabled adults or ~~elderly persons~~;

2. Health professional or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;
5. State, county, or municipal criminal justice employee or law enforcement officer;
6. Human rights advocacy committee or long-term care ombudsman council member; or
7. Bank, savings and loan, or credit union officer, trustee, or employee,

who knows, or has reasonable cause to suspect, that a vulnerable disabled adult ~~or an elderly person~~ has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline registry and tracking system on the single statewide toll-free telephone number.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

1. Name, age, race, sex, physical description, and location of each victim disabled adult ~~or an elderly person~~ alleged to have been abused, neglected, or exploited.
2. Names, addresses, and telephone numbers of the victim's disabled adult's or elderly person's family members.
3. Name, address, and telephone number of each alleged perpetrator.
4. Name, address, and telephone number of the caregiver of the victim disabled adult or elderly person, if different from the alleged perpetrator.
5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.
6. Description of the physical or psychological injuries sustained.
7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.
8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.

(2) MANDATORY REPORTS OF DEATH.—Any person who is required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable disabled adult ~~or an elderly person~~ died as a result of abuse, neglect, or exploitation shall immediately report

the suspicion to the appropriate medical examiner, to the appropriate criminal justice agency, and to the department, notwithstanding the existence of a death certificate signed by a practicing physician. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report the findings of the investigation, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 415.107.

Section 29. Section 415.1035, Florida Statutes, is amended to read:

415.1035 Facility's duty to inform residents of their right to report abusive, neglectful, or exploitive practices.—The department shall work cooperatively with the Agency for Health Care Administration and the Department of Elderly Affairs to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful, or exploitive practices. Each facility must establish appropriate policies and procedures to facilitate such reporting.

~~(1) Every facility that serves disabled adults or elderly persons must inform residents of their right to report abusive, neglectful, or exploitive practices and must establish appropriate policies and procedures to facilitate such reporting.~~

~~(2) The statewide toll-free telephone number for the central abuse registry and tracking system must be posted in all facilities operated by, under contract with, or licensed by the department or the Agency for Health Care Administration which provide services to disabled adults or elderly persons. Such posting must be clearly visible and in a prominent place within the facility and must be accompanied by the words, "To Report the Abuse, Neglect, or Exploitation of a Disabled Adult or an Elderly Person, Please Call:....."~~

Section 30. Subsection (1) of section 415.1036, Florida Statutes, is amended to read:

415.1036 Immunity.—

(1) Any person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. This section does not grant immunity, civil or criminal, to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable disabled adult or an elderly person. Further, a resident or employee of a facility that serves vulnerable disabled adults or elderly persons may not be subjected to reprisal or discharge because of the resident's or employee's actions in reporting abuse, neglect, or exploitation pursuant to s. 415.1034.

Section 31. Section 415.104, Florida Statutes, is amended to read:

415.104 Protective ~~services~~ investigations of cases of abuse, neglect, or exploitation of ~~vulnerable aged persons or disabled adults~~; transmittal of records to state attorney.—

(1) The department shall, upon receipt of a report alleging abuse, neglect, or exploitation of a vulnerable an aged person or disabled adult, ~~begin commence, or cause to be commenced~~ within 24 hours, a protective ~~services~~ investigation of the facts alleged therein. If, ~~upon arrival of the protective investigator at the scene of the incident~~, a caregiver refuses to allow the department to begin a protective ~~services~~ investigation or interferes with the department's ability to conduct of such an investigation, the appropriate law enforcement agency shall be contacted for assistance to assist the department in commencing the protective services investigation. If, during the course of the investigation, the department has reason to believe that the abuse, neglect, or exploitation is perpetrated by a second party, the appropriate law enforcement criminal justice agency and state attorney shall be orally notified. The department and the law enforcement agency shall cooperate to allow the criminal investigation to proceed concurrently with, and not be hindered by, the protective investigation, in order that such agencies may begin a criminal investigation concurrent with the protective services investigation of the department. In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or accompanied by another person, if the person or the attorney executes an affidavit of understanding with the department and agrees to comply with the confidentiality provisions of s. 415.107. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. The department shall make a preliminary written report to the law enforcement criminal justice agencies within 5 working days after the oral report. The department shall, within 24 hours after receipt of the report, notify the appropriate human rights advocacy committee, or long-term care ombudsman council, when appropriate, that an alleged abuse, neglect, or exploitation perpetrated by a second party has occurred. Notice to the human rights advocacy committee or long-term care ombudsman council may be accomplished orally or in writing and shall include the name and location of the ~~vulnerable aged person or disabled adult~~ alleged to have been abused, neglected, or exploited and the nature of the report.

(2) Upon commencing an investigation, the protective investigator shall inform all of the vulnerable adults and alleged perpetrators named in the report of the following:

(a) The names of the investigators and identifying credentials from the department.

(b) The purpose of the investigation.

(c) That the victim, the victim's guardian, the victim's caregiver, and the alleged perpetrator, and legal counsel for any of those persons, have a right to a copy of the report at the conclusion of the investigation.

(d) The name and telephone number of the protective investigator's supervisor available to answer questions.

(e) That each person has the right to obtain his or her own attorney.

Any person being interviewed by a protective investigator may be represented by an attorney, at the person's own expense, or may choose to have another person present. The other person present may not be an alleged perpetrator in any report currently under investigation. Before participating in such interview, the other person present shall execute an agreement to comply with the confidentiality requirements of ss. 415.101-415.113. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In an investigative interview with a vulnerable adult, the protective investigator may conduct the interview with no other person present.

(3) For each report it receives, the department shall perform an onsite investigation to:

(a) Determine that the person is a vulnerable ~~an aged person or disabled~~ adult as defined in s. 415.102.

(b) Determine whether the person is a vulnerable adult in need of services, as defined in s. 415.102.

~~(c)(b) Determine the composition of the family or household, including the name, address, date of birth, social security number, sex, and race of each aged person in the household or disabled adult named in the report; any others in the household or in the care of the caregiver, or any other persons responsible for the aged person's or disabled adult's welfare; and any other adults in the same household.~~

~~(d)(c) Determine whether there is an indication that a vulnerable any aged person or disabled adult is abused, neglected, or exploited, including a determination of harm or threatened harm to any aged person or disabled adult;~~

(e) Determine the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof.

~~(f) Determine, if possible,; and a determination as to the person or persons apparently responsible for the abuse, neglect, or exploitation, including the name, address, date of birth, social security number, sex, and race of each person to be classified as an alleged perpetrator in a proposed confirmed report. An alleged perpetrator named in a proposed confirmed report of abuse, neglect, or exploitation shall cooperate in the provision of the required data for the central abuse registry and tracking system to the fullest extent possible.~~

~~(g)(d) Determine the immediate and long-term risk to each vulnerable aged person or disabled adult through utilization of standardized risk assessment instruments.~~

(h)(e) Determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the vulnerable aged person's or disabled

adult's well-being and cause the delivery of those services through the early intervention of the departmental worker responsible for service provision and management of identified services.

(4)(2) No later than 60 ~~30~~ days after receiving the initial report, the designated protective investigative adult services staff of the department shall complete the its investigation and classify the report as proposed confirmed or unfounded or close the report without classification and notify the guardian of the vulnerable aged person or disabled adult, the vulnerable aged person or disabled adult, and the caregiver of any recommendations of services to be provided to ameliorate the causes or effects of abuse, neglect, or exploitation alleged perpetrator. These findings must be reported to the department's central abuse registry and tracking system. For proposed confirmed reports, after receiving the final administrative order rendered in a hearing requested pursuant to s. 415.103(3)(d) or after the 30-day period during which an alleged perpetrator may request such a hearing has expired, the department shall classify the report of abuse, neglect, or exploitation as confirmed or unfounded and shall report its findings to the department's central abuse registry and tracking system, and must do so in accordance with the final order if a hearing was held.

(5)(3) Whenever the law enforcement criminal justice agency and the department have conducted independent investigations, the law enforcement criminal justice agency shall, within 5 working days after concluding its investigation, report its findings ~~from its investigation~~ to the state attorney and to the department.

(6)(4) Upon receipt of a report which alleges that an employee or agent of the department acting in an official capacity has committed an act of abuse, neglect, or exploitation, the department shall commence, or cause to be commenced ~~within 24 hours~~, a protective services investigation and shall notify the state attorney in whose circuit the alleged abuse, neglect, or exploitation occurred.

(7)(5) With respect to any case of reported abuse, neglect, or exploitation of a vulnerable an aged person or disabled adult, the department, when appropriate, shall transmit all relevant reports received by it which pertain to the investigation to the state attorney of the circuit where the incident occurred.

(8)(6) Within 15 days ~~after~~ of completion of the state attorney's investigation of a case reported to him or her pursuant to this section, the state attorney shall report his or her findings to the department and shall include a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(9)(7) The department shall not use a warning, reprimand, or disciplinary action against an employee, found in that employee's personnel records, as the sole basis for a finding of abuse, neglect, or exploitation.

Section 32. Section 415.1045, Florida Statutes, is amended to read:

415.1045 Protective investigations; onsite investigations; Photographs, videotapes, and medical examinations; abrogation of privileged communications; confidential records and documents; ~~classification or closure of records.~~—

(1) ~~PROTECTIVE INVESTIGATIONS.~~—

(a) ~~The department shall, upon receipt of a report alleging abuse or neglect of a disabled adult or an elderly person, commence, or cause to be commenced within 24 hours, a protective investigation of the facts alleged therein. The department shall, upon receipt of a report alleging only the exploitation of a disabled adult or an elderly person, commence, or cause to be commenced within 24 hours, excluding Saturdays, Sundays, and legal holidays, a protective investigation of the facts alleged therein.~~

(b) ~~Upon commencing an investigation, the adult protective investigator shall inform all disabled adults and elderly persons and alleged perpetrators named in the report of the following:~~

1. ~~The names of the investigators and identifying credentials from the department.~~

2. ~~The purpose of the investigation.~~

3. ~~The possible consequences of the investigation.~~

4. ~~That the victim, the victim's guardian, the victim's caregiver, and the alleged perpetrator, and legal counsel for any of those persons, have a right to a copy of the report at the conclusion of the investigation.~~

5. ~~That appeal rights may exist and that such rights will be explained in writing when appropriate and necessary at the conclusion of the investigation.~~

6. ~~The name and telephone number of the adult protective investigator's supervisor available to answer questions.~~

(c) ~~Except as provided in paragraph (d), in an investigative interview, any person being interviewed may be represented by an attorney, at the person's own expense, or may choose to have another person present. The other person present may not be an alleged perpetrator in any report currently under investigation. Before participating in such interview, the other person present shall execute an agreement to comply with the confidentiality requirements of ss. 415.101-415.113. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons.~~

(d) ~~In an investigative interview with the disabled adult or an elderly person, the protective investigator may conduct the interview with no other person present.~~

(2) ~~ONSITE INVESTIGATIONS.~~—For each report it receives, the department shall perform an onsite investigation to:

(a) ~~Determine whether the person is a disabled adult or an elderly person as defined in s. 415.102.~~

(b) ~~Determine whether the person is a disabled adult in need of services or an elderly person in need of services, as defined in s. 415.102.~~

(c) ~~Determine whether there is an indication that any disabled adult or elderly person has been or is being abused, neglected, or exploited, including a determination of the immediate and long-term risk; the nature and extent of present or prior injuries; and the nature and extent of any abuse, neglect, or exploitation, and any evidence thereof.~~

(d) ~~Determine whether protective and ameliorative services are necessary to safeguard and ensure the disabled adult's or elderly person's well-being and cause the delivery of those services.~~

(e) ~~Determine the person or persons apparently responsible for the abuse, neglect, or exploitation.~~

(f) ~~Determine the composition of the family or household, including all disabled adults and elderly persons named in the report, all persons in the care of the caregiver, any other persons responsible for the disabled adult's or elderly person's welfare, and any other adults or children in the same household.~~

(g) ~~Gather appropriate demographic data. Each person must cooperate to the fullest extent possible by providing the person's name, address, date of birth, social security number, sex, and race to the department's representative.~~

(1)(3) PHOTOGRAPHS AND VIDEOTAPES.—

(a) The adult protective investigator, while investigating a report of abuse, neglect, or exploitation, may take or cause to be taken photographs and videotapes of the vulnerable disabled adult or elderly person, and of his or her the disabled adult's or elderly person's environment, which are relevant to the investigation. All photographs and videotapes taken during the course of the protective investigation are confidential and exempt from public disclosure as provided in s. 415.107.

(b) Any photographs or videotapes made pursuant to this subsection, or copies thereof, must be sent to the department as soon as possible.

(2)(4) MEDICAL EXAMINATIONS.—

(a) With the consent of the vulnerable disabled adult or elderly person who has the capacity to consent or the vulnerable disabled adult's or elderly person's guardian, or pursuant to s. 415.1051, the department may cause the vulnerable disabled adult or elderly person to be referred to a licensed physician or any emergency department in a hospital or health care facility for medical examination, diagnosis, or treatment if any of the following circumstances exist:

1. The areas of trauma visible on the vulnerable disabled adult or elderly person indicate a need for medical examination;
2. The vulnerable disabled adult or elderly person verbally complains or otherwise exhibits signs or symptoms indicating a need for medical attention as a consequence of suspected abuse, neglect, or exploitation; or
3. The vulnerable disabled adult or elderly person is alleged to have been sexually abused.

(b) Upon admission to a hospital or health care facility, with the consent of the vulnerable disabled adult or elderly person who has capacity to consent or that person's guardian, or pursuant to s. 415.1051, the medical staff of the facility may examine, diagnose, or treat the vulnerable disabled adult or elderly person. If a person who has legal authority to give consent for the provision of medical treatment to a vulnerable disabled adult or elderly person has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the medical condition or to stabilize the patient pending a determination by the court of the department's petition authorizing protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.

(c) Medical examination, diagnosis, and treatment provided under this subsection must be paid for by third-party reimbursement, if available, or by the vulnerable disabled adult, if he or she is or elderly person or that person's guardian from the disabled adult's or elderly person's assets, if the disabled adult or elderly person is determined to be financially able to pay; or, if he or she the disabled adult or elderly person is unable to pay, the department shall pay the costs within available emergency services funds.

(d) Reports of examination, diagnosis, and treatment made under this subsection, or copies thereof, must be sent to the department as soon as possible.

(e) This subsection does not obligate the department to pay for any treatment other than that necessary to alleviate the immediate presenting problems.

~~(3)~~(5) ABROGATION OF PRIVILEGED COMMUNICATIONS.—The privileged quality of communication between husband and wife and between any professional and the professional's patient or client, and any other privileged communication except that between attorney and client or clergy and person, as such communication relates to both the competency of the witness and to the exclusion of confidential communications, does not apply to any situation involving known or suspected abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person and does not constitute grounds for failure to report as required by s. 415.1034, for failure to cooperate with the department in its activities under ss. 415.101-415.113, or for failure to give evidence in any judicial or administrative proceeding relating

to abuse, neglect, or exploitation of a vulnerable disabled adult ~~or an elderly person~~.

~~(4)~~(6) MEDICAL, SOCIAL, OR FINANCIAL RECORDS OR DOCUMENTS.—

(a) The ~~adult~~ protective investigator, while investigating a report of abuse, neglect, or exploitation, must have access to, inspect, and copy all medical, social, or financial records or documents in the possession of any person, caregiver, guardian, or facility which are relevant to the allegations under investigation, unless specifically prohibited by the vulnerable disabled adult ~~or elderly person~~ who has capacity to consent.

(b) The confidentiality of any medical, social, or financial record or document that is confidential under state law does not constitute grounds for failure to:

1. Report as required by s. 415.1034;
2. Cooperate with the department in its activities under ss. 415.101-415.113;
3. Give access to such records or documents; or
4. Give evidence in any judicial or administrative proceeding relating to abuse, neglect, or exploitation of a vulnerable disabled adult ~~or an elderly person~~.

(5) ACCESS TO RECORDS AND DOCUMENTS.—If any person refuses to allow the protective investigator to have access to, inspect, or copy any medical, social, or financial record or document in the possession of any person, caregiver, guardian, or facility which is relevant to the allegations under investigation, the department may petition the court for an order requiring the person to allow access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to allow access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to allow access to and permit the inspection or copying of the medical, social, or financial record or document.

(6) WORKING AGREEMENTS.—The department shall enter into working agreements with the jurisdictionally responsible county sheriffs' office or local police department that will be the lead agency when conducting any criminal investigation arising from an allegation of abuse, neglect, or exploitation of a vulnerable adult. The working agreement must specify how the requirements of this chapter will be met. For the purposes of such agreement, the jurisdictionally responsible law enforcement entity is authorized to share Florida criminal history and local criminal history information that is not otherwise exempt from s. 119.07(1) with the district personnel. A law enforcement entity entering into such agreement must comply with s. 943.0525. Criminal justice information provided by such law enforcement

entity shall be used only for the purposes specified in the agreement and shall be provided at no charge. Notwithstanding any other provision of law, the Department of Law Enforcement shall provide to the department electronic access to Florida criminal justice information which is lawfully available and not exempt from s. 119.07(1), only for the purpose of protective investigations and emergency placement. As a condition of access to such information, the department shall be required to execute an appropriate user agreement addressing the access, use, dissemination, and destruction of such information and to comply with all applicable laws and rules of the Department of Law Enforcement.

~~(7) CLASSIFICATIONS AND CLOSURES.—No later than 45 days after receiving an initial report in which the department has jurisdiction, the adult protective investigator shall complete the investigation and classify the report as proposed confirmed or unfounded, or close the report without classification. The adult protective investigator must document the details of the investigation, close the report, and enter the data into the central abuse registry and tracking system no later than 60 days after receiving the initial report.~~

Section 33. Section 415.105, Florida Statutes, is amended to read:

415.105 Provision of protective services with consent; withdrawal of consent; interference.—

(1) PROTECTIVE SERVICES WITH CONSENT.—If the department determines through its investigation that a vulnerable disabled adult or an elderly person demonstrates a need for protective services or protective supervision, the department shall immediately provide, or arrange for the provision of, protective services or protective supervision, including in-home services, provided that the vulnerable disabled adult or elderly person consents. A vulnerable adult disabled person in need of services as defined in s. 415.102 shall be referred to the community care for disabled adults program, or, ~~An elderly person in need of services as defined in s. 415.102 shall be referred to the community care for the elderly program administered by the Department of Elderly Affairs.~~

(2) WITHDRAWAL OF CONSENT.—If the vulnerable disabled adult or elderly person withdraws consent to the receipt of protective services or protective supervision, the services may not be provided, except pursuant to s. 415.1051.

(3) INTERFERENCE WITH THE PROVISION OF PROTECTIVE SERVICES.—When any person refuses to allow the provision of protective services to a vulnerable adult who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable adult is in need of protective services and that the person refuses to allow the provision of such services, the court may issue an order enjoining the

person from interfering with the provision of protective services to the vulnerable adult.

Section 34. Section 415.1051, Florida Statutes, is amended to read:

415.1051 Protective services interventions when capacity to consent is lacking; nonemergencies; emergencies; orders; limitations.—

(1) NONEMERGENCY PROTECTIVE SERVICES INTERVENTIONS.—If the department has reasonable cause to believe that a vulnerable disabled adult or elderly person is being abused, neglected, or exploited and is in need of protective services but lacks the capacity to consent to protective services, the department shall petition the court for an order authorizing the provision of protective services.

(a) Nonemergency protective services petition.—The petition must state the name, age, and address of the vulnerable disabled adult or elderly person, allege specific facts sufficient to show that the vulnerable disabled adult or elderly person is in need of protective services and lacks the capacity to consent to them, and indicate the services needed.

(b) Notice.—Notice of the filing of the petition and a copy of the petition must be given to the vulnerable disabled adult or elderly person, to that person's spouse, guardian, and legal counsel, and, when known, to the adult children or next of kin of the vulnerable disabled adult or elderly person. Such notice must be given at least 5 days before the hearing.

(c) Hearing.—

1. The court shall set the case for hearing within 14 days after the filing of the petition. The vulnerable disabled adult or elderly person and any person given notice of the filing of the petition have the right to be present at the hearing. The department must make reasonable efforts to ensure the presence of the vulnerable disabled adult or elderly person at the hearing.

2. The vulnerable disabled adult or elderly person has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable disabled adult or elderly person who is without legal representation.

3. The court shall determine whether:

a. Protective services, including in-home services, are necessary, for the disabled adult or elderly person; and

b. The vulnerable disabled adult or elderly person lacks the capacity to consent to the provision of such services.

(d) Hearing findings.—If at the hearing the court finds by clear and convincing evidence that the vulnerable disabled adult or elderly person is in need of protective services and lacks the capacity to consent to protective services, the court may issue an order authorizing the provision of protective services. If an order for protective services is issued, it must include a statement of the services to be provided and designate an individual or

agency to be responsible for performing or obtaining the essential services on behalf of the ~~vulnerable disabled adult or elderly person~~ or otherwise consenting to protective services on behalf of the vulnerable disabled adult or elderly person.

(e) Continued protective services.—

1. No more than 60 days after the date of the order authorizing the provision of protective services, the department shall petition the court to determine whether:

a. Protective services will be continued with the consent of the vulnerable ~~disabled adult or elderly person~~ pursuant to subsection (1);

b. Protective services will be continued for the vulnerable ~~disabled adult or elderly person~~ who lacks capacity;

c. Protective services will be discontinued; or

d. A petition for guardianship should be filed pursuant to chapter 744.

2. If the court determines that a petition for guardianship should be filed pursuant to chapter 744, the court, for good cause shown, may order continued protective services until it makes a determination regarding the ~~disabled adult's or elderly person's~~ capacity.

(f) Costs.—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so; or by third-party reimbursement, if available. If the vulnerable ~~disabled adult or elderly person~~ is unable to pay for guardianship, application may be made to the public guardian for public guardianship services, if available.

(2) EMERGENCY PROTECTIVE SERVICES INTERVENTION.—If the department has reasonable cause to believe that a vulnerable ~~disabled adult or an elderly person~~ is suffering from abuse or neglect that presents a risk of death or serious physical injury to the vulnerable ~~disabled adult or elderly person~~ and that the vulnerable ~~disabled adult or elderly person~~ lacks the capacity to consent to emergency protective services, the department may take action under this subsection. If the vulnerable ~~disabled adult or elderly person~~ has the capacity to consent and refuses consent to emergency protective services, emergency protective services may not be provided.

(a) Emergency entry of premises.—If, upon arrival at the scene of the incident, consent is not obtained for access to the alleged victim for purposes of conducting a protective investigation under this subsection and the department has reason to believe that the situation presents a risk of death or serious physical injury, a representative of the department and a law enforcement officer may forcibly enter the premises. If, after obtaining access to the alleged victim, it is determined through a personal assessment of the situation that no emergency exists and there is no basis for emergency protective services intervention under this subsection, the department shall terminate the emergency entry ~~and may provide protective services with the consent of the disabled adult or elderly person or may petition the court to~~

~~provide nonemergency protective services or protective supervision pursuant to subsection (1).~~

(b) ~~Emergency removal from premises.—If it appears that the vulnerable disabled adult or elderly person lacks the capacity to consent to emergency protective services and that the vulnerable disabled adult or elderly person, from the personal observations of the representative of the department and specified medical personnel or law enforcement officers, is likely to incur a risk of death or serious physical injury if such person is not immediately removed from the premises, then the representative of the department shall transport or arrange for the transportation of the vulnerable disabled adult or elderly person to an appropriate medical or protective services facility in order to provide emergency protective services. Law enforcement personnel have a duty to transport when medical transportation is not available or needed and the vulnerable disabled adult or elderly person presents a threat of injury to self or others. If the vulnerable disabled adult's or elderly person's caregiver or guardian is present, the adult protective investigator must seek the caregiver's or guardian's consent pursuant to subsection (4) before the vulnerable disabled adult or elderly person may be removed from the premises, unless the adult protective investigator suspects that the vulnerable disabled adult's or elderly person's caregiver or guardian has caused the abuse, neglect, or exploitation to the disabled adult or elderly person. The department shall, within 24 hours after providing or arranging for emergency removal of the vulnerable disabled adult or elderly person, excluding Saturdays, Sundays, and legal holidays, petition the court for an order authorizing emergency protective services.~~

(c) ~~Emergency medical treatment.—If, upon admission to a medical facility, it is the opinion of the medical staff that immediate medical treatment is necessary to prevent serious physical injury or death, and that such treatment does not violate a known health care advance directive prepared by the vulnerable disabled adult or elderly person, the medical facility may proceed with treatment to the vulnerable disabled adult or elderly person. If a person with legal authority to give consent for the provision of medical treatment to a vulnerable disabled adult or an elderly person has not given or has refused to give such consent, examination and treatment must be limited to reasonable examination of the patient to determine the medical condition of the patient and treatment reasonably necessary to alleviate the emergency medical condition or to stabilize the patient pending court determination of the department's petition authorizing emergency protective services. Any person may seek an expedited judicial intervention under rule 5.900 of the Florida Probate Rules concerning medical treatment procedures.~~

(d) ~~Emergency protective services petition.—A petition filed under this subsection must state the name, age, and address of the vulnerable disabled adult or elderly person and allege the facts constituting the emergency protective services intervention and subsequent removal of the vulnerable disabled adult or elderly person or provision of in-home services, the facts relating to the capacity of the vulnerable disabled adult or elderly person to consent to services, the efforts of the department to obtain consent, and the services needed or delivered.~~

(e) Notice.—Notice of the filing of the emergency protective services petition and a copy of the petition must be given to the vulnerable disabled adult ~~or elderly person~~, to that person's spouse, to that person's guardian, if any, to legal counsel representing the vulnerable disabled adult ~~or elderly person~~, and, when known, to adult children or next of kin of the vulnerable disabled adult ~~or elderly person~~. Such notice must be given at least 24 hours before any hearing on the petition for emergency protective services.

(f) Hearing.—When emergency removal has occurred under this subsection, a hearing must be held within 4 days after the filing of the emergency protective services petition, excluding Saturday, Sunday, and legal holidays, to establish reasonable cause for grounds to continue emergency protective services.

1. The court shall determine, by clear and convincing evidence, whether an emergency existed which justified the emergency protective services intervention, whether the vulnerable disabled adult ~~or elderly person~~ is in need of emergency protective services, whether the vulnerable disabled adult ~~or elderly person~~ lacks the capacity to consent to emergency protective services, and whether:

a. Emergency protective services will continue with the consent of the vulnerable disabled adult ~~or elderly person~~ pursuant to s. 415.105(1);

b. Emergency protective services will continue without the consent of the vulnerable disabled adult ~~or elderly person~~ pursuant to subsection (2); or

c. Emergency protective services will be discontinued.

2. The vulnerable disabled adult ~~or elderly person~~ has the right to be represented by legal counsel at the hearing. The court shall appoint legal counsel to represent a vulnerable disabled adult ~~or an elderly person~~ who is without legal representation.

3. The department must make reasonable efforts to ensure the presence of the vulnerable disabled adult ~~or elderly person~~ at the hearing.

4. If an order to continue emergency protective services is issued, it must state the services to be provided and designate an individual or agency to be responsible for performing or obtaining the essential services ~~on behalf of the disabled adult or elderly person~~, or otherwise consenting to protective services on behalf of the vulnerable disabled adult ~~or elderly person~~.

(g) Continued emergency protective services.—

1. Not more than 60 days after the date of the order authorizing the provision of emergency protective services, the department shall petition the court to determine whether:

a. Emergency protective services will be continued with the consent of the vulnerable disabled adult ~~or elderly person~~ pursuant to subsection (1);

b. Emergency protective services will be continued for the vulnerable disabled adult ~~or elderly person~~ who lacks capacity;

- c. Emergency protective services will be discontinued; or
- d. A petition should be filed under chapter 744.

2. If it is decided to file a petition under chapter 744, for good cause shown, the court may order continued emergency protective services until a determination is made by the court regarding ~~the disabled adult's or elderly person's capacity.~~

(h) Costs.—The costs of services ordered under this section must be paid by the perpetrator if the perpetrator is financially able to do so, or by third-party reimbursement, if available. ~~If the disabled adult or elderly person is unable to pay for guardianship, application may be made to the public guardian for public guardianship services, if available.~~

(3) PROTECTIVE SERVICES ORDER.—In ordering any protective services under this section, the court shall adhere to the following limitations:

(a) Only such protective services as are necessary to ameliorate the conditions creating the abuse, neglect, or exploitation may be ordered, and the court shall specifically designate the approved services in the order of the court.

(b) Protective services ordered may not include a change of residence, unless the court specifically finds such action is necessary to ameliorate the conditions creating the abuse, neglect, or exploitation and the court gives specific approval for such action in the order. Placement may be made to such facilities as adult family-care homes, assisted living facilities, or nursing homes, or to other appropriate facilities. Placement may not be made to facilities for the acutely mentally ill, except as provided in chapter 394.

(c) If an order to continue emergency protective services is issued, it must include the designation of an individual or agency to be responsible for performing or obtaining the essential services on behalf of the vulnerable disabled adult or elderly person or otherwise consenting to protective services on behalf of the vulnerable disabled adult or elderly person.

(4) PROTECTIVE SERVICES INTERVENTIONS WITH CAREGIVER OR GUARDIAN PRESENT.—

(a) When a vulnerable disabled adult or an elderly person who lacks the capacity to consent has been identified ~~in a report~~ as the victim of abuse, neglect, or exploitation and evidences a need for emergency or non-emergency protective services or protective supervision, and a caregiver or guardian who is responsible for the care of the disabled adult or elderly person is present, the adult protective investigator must first request consent from the caregiver or guardian, if present, before providing protective services or protective supervision, unless the adult protective investigator suspects that the ~~disabled adult's or elderly person's~~ caregiver or guardian has caused the abuse, neglect, or exploitation of ~~the disabled adult or elderly person~~.

(b) If the caregiver or guardian agrees to engage or provide services designed to prevent further abuse, neglect, or exploitation, the department may provide protective supervision ~~for the disabled adult or elderly person~~.

(c) If the caregiver or guardian refuses to give consent or later withdraws consent to agreed-upon services, or otherwise fails to provide needed care and supervision, the department may provide emergency protective services as provided in subsection (2). If emergency protective services are so provided, the department must then petition the court for an order to provide emergency protective services under subsection (3).

(5) INTERFERENCE WITH COURT-ORDERED PROTECTIVE SERVICES.—When a court order exists authorizing protective services for a vulnerable adult who lacks capacity to consent and any person interferes with the provision of such court-ordered protective services, the appropriate law enforcement agency shall enforce the order of the court.

~~(6)~~⁽⁵⁾ LIMITATIONS.—This section does not limit in any way the authority of the court or a criminal justice officer, or any other duly appointed official, to intervene in emergency circumstances under existing statutes. This section does not limit the authority of any person to file a petition for guardianship under chapter 744.

Section 35. Section 415.1052, Florida Statutes, is amended to read:

415.1052 Interference with investigation or with the provision of protective services.—

(1) If, upon arrival of the ~~adult~~ protective investigator, any person refuses to allow the department to begin a protective investigation, interferes with the department's ability to conduct such an investigation, or refuses to give access to the ~~vulnerable disabled adult or elderly person~~, the appropriate law enforcement agency must be contacted to assist the department in commencing the protective investigation.

~~(2) —If any person refuses to allow the adult protective investigator to have access to, inspect, or copy any medical, social, or financial record or document in the possession of any person, caregiver, guardian, or facility which is relevant to the allegations under investigation, the department may petition the court for an order requiring the person to give access to the record or document. The petition must allege specific facts sufficient to show that the record or document is relevant to the allegations under investigation and that the person refuses to give access to such record or document. If the court finds by a preponderance of the evidence that the record or document is relevant to the allegations under investigation, the court may order the person to give access to and permit the inspection or copying of the medical, social, or financial record or document.~~

~~(2)~~⁽³⁾ When any person refuses to allow the provision of protective services to the vulnerable ~~disabled adult or elderly person~~ who has the capacity to consent to services, the department shall petition the court for an order enjoining the person from interfering with the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable ~~disabled adult or elderly person~~ is in need of protective services and that the person refuses to allow the provision of such services. If the court finds by clear and convincing evidence that the vulnerable ~~disabled adult or elderly person~~ is in need of protective services and that the person

refuses to allow the provision of such services, the court may issue an order enjoining the person from interfering with the provision of protective services to the vulnerable disabled adult or elderly person.

~~(4) When a court order exists authorizing protective services for a disabled adult or an elderly person who lacks capacity to consent and any person interferes with the provision of such court-ordered protective services to the disabled adult or elderly person, the appropriate law enforcement agency shall enforce the order of the court.~~

Section 36. Section 415.1055, Florida Statutes, is amended to read:

~~415.1055 Notification to administrative entities, subjects, and reporters; notification to law enforcement and state attorneys.—~~

~~(1) NOTIFICATION TO ADMINISTRATIVE ENTITIES.—~~

~~(a) The department shall, within 24 hours after receipt of a report of abuse, neglect, or exploitation of a disabled adult or an elderly person within a facility, excluding Saturdays, Sundays, and legal holidays, notify the appropriate human rights advocacy committee and the long-term care ombudsman council, in writing, that the department has reasonable cause to believe that a disabled adult or an elderly person has been abused, neglected, or exploited at the facility.~~

~~(1)(b) Upon receipt of a report that alleges that an employee or agent of the department or the Department of Elderly Affairs, acting in an official capacity, has committed an act of abuse, neglect, or exploitation, the department shall notify the state attorney in whose circuit the abuse, neglect, or exploitation occurred. This notification may be oral or written.~~

~~(2)(c) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable disabled adult or an elderly person has been abused, neglected, or exploited by another person, the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred shall be notified immediately, either orally or in writing.~~

~~(3)(d) If at any time during a protective investigation the department has reasonable cause to believe that a vulnerable disabled adult or an elderly person has been abused, neglected, or exploited by another person, the appropriate law enforcement agency shall be immediately notified. Such agency may begin a criminal investigation concurrent with or independent of the protective investigation of the department. This notification may be oral or written.~~

~~(4)(e) If at any time during a protective investigation the department has reasonable cause to believe that abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person has occurred within a facility that receives Medicaid funds, the department shall notify the Medicaid Fraud Control Unit within the Department of Legal Affairs, Office of the Attorney General, in order that it may begin an investigation concurrent with the protective investigation of the department. This notification may be oral or written.~~

(5)(f) If at any time during a protective investigation the department has reasonable cause to believe that an employee of a facility, as defined in s. 415.102(13), is the alleged perpetrator of abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person, the department shall notify the Agency for Health Care Administration, Division of Health Quality Assurance, in writing.

(6)(g) If at any time during a protective investigation the department has reasonable cause to believe that professional licensure violations have occurred, the department shall notify the Division of Medical Quality Assurance within the Department of Health. This notification must be in writing.

~~(7)(h) When a report has been classified as proposed confirmed, The department shall notify the state attorney having jurisdiction in the county in which the abuse, neglect, or exploitation occurred. The department may submit a report that has been closed without classification if evidence indicates that further criminal investigation is warranted. This notification must be in writing.~~

(8)(i) At the conclusion of a protective investigation at a facility, the department shall notify either the human rights advocacy committee or long-term care ombudsman council of the results of the investigation. This notification must be in writing.

~~(j) At the conclusion of a protective investigation, the department shall notify the Agency for Health Care Administration when a licensee or a certified nursing assistant has been named as perpetrator in a report that has been classified as proposed confirmed or confirmed. This notification must be in writing.~~

(9)(k) When a report has been classified as ~~proposed confirmed~~ in cases involving a guardian of the person or property, or both, is received, the department shall notify the probate court having jurisdiction over the guardianship, ~~of the proposed confirmed report. This notification must be in writing.~~

(10) When a report has been received and the department has reason to believe that a vulnerable adult resident of a facility licensed by the Agency for Health Care Administration has been the victim of abuse, neglect, or exploitation, the department shall provide a copy of its investigation to the agency. If the investigation determines that a health professional licensed or certified under the Department of Health may have abused, neglected, or exploited a vulnerable adult, the department shall also provide a copy to the Department of Health.

~~(2) NOTIFICATION TO OTHER PERSONS.—~~

~~(a) In the case of a report that has been classified as unfounded, notice of the classification must be given to the disabled adult or elderly person, the guardian of that person, the caregiver of that person, and the person who had been named as the alleged perpetrator. The notice must be sent by regular mail and must advise the recipient that the report will be expunged in 1 year.~~

~~(b) If a report has been classified as proposed confirmed, notice of the classification must be given to the disabled adult or elderly person, the guardian of that person, the caregiver of that person, and the alleged perpetrator, and legal counsel, if known, for those persons.~~

~~1.—The notice must state the nature of the alleged abuse, neglect, or exploitation and the facts that are alleged to support the proposed confirmed classification.~~

~~2.—The notice must advise the recipient of the recipient's right to request a copy of the report within 60 days after receipt of the notice.~~

~~3.—The notice must clearly advise the alleged perpetrator that the alleged perpetrator has the right to request amendment or expunction of the report within 60 days after receipt of the notice, and that failure to request amendment or expunction within 60 days means that the report will be reclassified as confirmed at the expiration of the 60 days and that the alleged perpetrator agrees not to contest the classification of the report. No further administrative or judicial proceedings in the matter are allowed.~~

~~4.—The notice must state that, if the report becomes confirmed, the alleged perpetrator may be disqualified from working with children, the developmentally disabled, disabled adults, and elderly persons.~~

~~5.—Notice of a proposed confirmed report must be personally served upon the alleged perpetrator in this state by an adult protective investigator, a sheriff, or a private process server in the district in which the alleged perpetrator resides, works, or can be found. Proof of service of the notice must be by affidavit prepared by the individual serving the notice upon the alleged perpetrator. The affidavit must state the name of the person serving the notice, the name of the alleged perpetrator served, the location at which the alleged perpetrator was served, and the time the notice was served. If the notice of a proposed confirmed report cannot be personally served upon the alleged perpetrator in this state or if the alleged perpetrator does not reside in this state, the notice of the proposed confirmed report must be sent by certified mail, return receipt requested, forwarding and address correction requested, to the last known address of the alleged perpetrator. If an alleged perpetrator cannot be served either by personal service or by certified mail, the record of the proposed confirmed report must be maintained pursuant to s. 415.1065.~~

~~6.—Notice to other named persons may be sent by regular mail, with the department giving notice to the caregiver, the guardian, legal counsel for all parties, and the disabled adult or elderly person.~~

~~7.—If a proposed confirmed report becomes confirmed because the alleged perpetrator fails to make a timely request to amend or expunge the proposed confirmed report, the department must give notice of the confirmed classification to the perpetrator and the perpetrator's legal counsel.~~

~~a.—Notice of the confirmed classification must inform the perpetrator that the perpetrator may be disqualified from working with children, the developmentally disabled, disabled adults, and elderly persons.~~

~~b. The notice must inform the perpetrator that further departmental proceedings in the matter are not allowed.~~

~~c. The notice of the confirmed classification must be sent by certified mail, return receipt requested.~~

~~(c) If a report is closed without classification, notice must be given to the guardian of the disabled adult or elderly person, the disabled adult or elderly person, the caregiver of that person, any person or facility named in the report, and the person who had been named as the alleged perpetrator. The notice must be sent by regular mail and must advise the recipient that:~~

~~1. The report will be retained for 7 years.~~

~~2. The recipient has a right to request a copy of this report.~~

~~3. Any person or facility named in a report classified as closed without classification has the right to request amendment or expunction of the report within 60 days after the receipt of the notice, and that failure to request amendment or expunction within 60 days means that the report will remain classified as closed without classification and that the person agrees not to contest the classification of the report. No further proceeding will be allowed in this matter.~~

~~(d) In the case of a report that has been determined by an adult protective services investigator to be either a disabled adult in need of services or an elderly person in need of services, as defined in s. 415.102, no classification of the report shall be made and no notification shall be required.~~

~~(e) The department shall adopt rules prescribing the content of the notices to be provided and requiring uniformity of content and appearance of each notice of classification or closure without classification.~~

~~(3) NOTIFICATION BY LAW ENFORCEMENT AND STATE ATTORNEYS.—~~

~~(a) Whenever the law enforcement agency and the department have conducted independent investigations, the law enforcement agency shall, within 5 working days after concluding its investigation, report its findings to the department and to the state attorney.~~

~~(b) Within 15 days after completion of an investigation of a case reported to the state attorney under this section, the state attorney shall report the findings to the department and shall include a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.~~

Section 37. Subsections (2) and (3) of section 415.106, Florida Statutes, are amended to read:

415.106 Cooperation by the department and criminal justice and other agencies.—

(2) To ensure coordination, communication, and cooperation with the investigation of abuse, neglect, or exploitation of ~~vulnerable disabled adults or elderly persons~~, the department shall develop and maintain interprogram agreements or operational procedures among appropriate departmental programs and the State Long-Term Care Ombudsman Council, the Statewide Human Rights Advocacy Committee, and other agencies that provide services to vulnerable disabled adults ~~or elderly persons~~. These agreements or procedures must cover such subjects as the appropriate roles and responsibilities of the department in identifying and responding to reports of abuse, neglect, or exploitation of vulnerable disabled adults ~~or elderly persons~~; the provision of services; and related coordinated activities.

(3) To the fullest extent possible, the department shall cooperate with and seek cooperation from all appropriate public and private agencies, including health agencies, educational agencies, social service agencies, courts, organizations, or programs providing or concerned with human services related to the prevention, identification, or treatment of abuse, neglect, or exploitation of vulnerable disabled adults ~~and elderly persons~~.

Section 38. Section 415.107, Florida Statutes, is amended to read:

415.107 Confidentiality of reports and records.—

(1) In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable disabled adult ~~or an elderly person~~, all records concerning reports of abuse, neglect, or exploitation of the vulnerable disabled adult ~~or elderly person~~, including reports made to the central abuse hotline registry and tracking system, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113.

(2) Upon the request of the committee chairperson, access to all records shall be granted to staff of the legislative committees with jurisdiction over issues and services related to vulnerable adults, or over the department. All confidentiality provisions that apply to the Department of Children and Family Services continue to apply to the records made available to legislative staff under this subsection.

(3)(2) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, of the Agency for Health Care Administration, or of the Department of Elderly Affairs who are responsible for carrying out ~~adult~~ protective investigations, ongoing ~~adult~~ protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, or other facilities used for the placement of vulnerable disabled adults ~~or elderly persons~~.

(b) A criminal justice agency investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable disabled adult ~~or an elderly person~~.

(c) The state attorney of the judicial circuit in which the vulnerable disabled adult or elderly person resides or in which the alleged abuse, neglect, or exploitation occurred.

(d) Any victim, the victim's person who is the subject of a report or the subject's guardian, caregiver, or legal counsel, and any person who the department has determined might be abusing, neglecting, or exploiting the victim.

(e) A court, by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must be limited to inspection in camera, unless the court determines that public disclosure of the information contained in such records is necessary for the resolution of an issue then pending before it.

(f) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(g) Any appropriate official of the human rights advocacy committee or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person.

(h) Any appropriate official of the department, of the Agency for Health Care Administration, or of the Department of Elderly Affairs who is responsible for:

1. Administration or supervision of the programs for the prevention, investigation, or treatment of adult abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or

2. Taking appropriate administrative action concerning an employee alleged to have perpetrated institutional abuse, neglect, or exploitation of a vulnerable disabled adult in an institution or an elderly person.

(i) Any person engaged in bona fide research or auditing. However, information identifying the subjects of the report must not be made available to the researcher.

(j) Employees or agents of an agency of another state that has jurisdiction comparable to the jurisdiction described in paragraph (a).

(k) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information that specifically identifies persons other than the employee.

(l) Any person in the event of the death of a vulnerable disabled adult or elderly person determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

~~(3) The Division of Administrative Hearings may have access to a proposed confirmed or a confirmed report, excluding the name of the reporter, for purposes of any administrative challenge relating to a proposed confirmed or confirmed report.~~

(4) The Department of Health, the Department of Business and Professional Regulation, and the Agency for Health Care Administration may have access to a confirmed report, excluding the name of the reporter, when considering taking disciplinary action against a licensee or certified nursing assistant pursuant to allegations for actions that resulted in a confirmed report of abuse, neglect, or exploitation which has been upheld following a chapter 120 hearing or a waiver of such proceedings.

(5) The department may release to any professional person such information as is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable disabled adult or an elderly person or the person perpetrating the abuse, neglect, or exploitation.

(6) The identity of any person reporting adult abuse, neglect, or exploitation of a vulnerable adult may not be released, without that person's written consent, to any person other than employees of the department responsible for adult protective services, the central abuse hotline registry and tracking system, or the appropriate state attorney or law enforcement agency. This subsection grants protection only for the person who reported the adult abuse, neglect, or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the adult abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect a vulnerable disabled adult or an elderly person who is the subject of a report, if the fact that the person made the report is not disclosed.

(7) For the purposes of this section, the term "access" means a visual inspection or copy of the hard-copy record maintained in the district.

(8) Information in the central abuse hotline may not be used for employment screening.

~~(8) The department, upon receipt of the applicable fee, shall search its central abuse registry and tracking system records pursuant to the requirements of ss. 110.1127, 393.0655, 394.457, 397.451, 400.506, 400.509, 400.512, 402.305(1), 402.3055, 402.313, 409.175, 409.176, and 985.407 for the existence of a confirmed report made on the personnel as defined in the foregoing provisions. The department shall report the existence of any confirmed report and advise the authorized licensing agency, applicant for licensure, or other authorized agency or person of the results of the search and the date of the report. Prior to a search being conducted, the department or its designee shall notify such person that an inquiry will be made. The department shall notify each person for whom a search is conducted of the results of the search upon request.~~

~~(9) Upon receipt of the applicable fee and with the written consent of a person applying to work with disabled adults or elderly persons, the department shall search its central abuse registry and tracking system for the~~

existence of a confirmed report. The department shall advise the employer and the person of any such report found and the results of the investigation.

~~(10) The department may charge a user fee to an employer or the agency in charge of a volunteer, whichever is applicable, for a search of the central abuse registry and tracking system of up to one-third of the actual cost of the screening process. All fees received by the department under this section shall be deposited in an administrative trust fund of the department and may be expended only for the caregiver screening program.~~

Section 39. Section 415.1102, Florida Statutes, is amended to read:

415.1102 Adult protection teams; services; eligible cases.—Subject to an appropriation, the department may develop, maintain, and coordinate the services of one or more multidisciplinary adult protection teams in each of the districts of the department. Such teams may be composed of, but need not be limited to, representatives of appropriate health, mental health, social service, legal service, and law enforcement agencies.

~~(4) The department shall utilize and convene the teams to supplement the protective services activities of the adult protective services program of the department. This section does not prevent a person from reporting under s. 415.1034 all suspected or known cases of abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person. The role of the teams is to support activities of the adult protective services program and to provide services deemed by the teams to be necessary and appropriate to abused, neglected, and exploited vulnerable disabled adults or elderly persons upon referral. Services must be provided with the consent of the vulnerable disabled adult, or elderly person or that person's guardian, or through court order. The specialized diagnostic assessment, evaluation, coordination, and other supportive services that an adult protection team must be capable of providing include, but are not limited to:~~

~~(a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.~~

~~(b) Telephone consultation services in emergencies and in other situations.~~

~~(c) Medical evaluation related to abuse, neglect, or exploitation as defined by department policy or rule.~~

~~(d) Psychological and psychiatric diagnosis and evaluation services for the disabled adult or elderly person.~~

~~(e) Short-term psychological treatment. It is the intent of the Legislature that short-term psychological treatment be limited to no more than 6 months' duration after treatment is initiated.~~

~~(f) Expert medical, psychological, and related professional testimony in court cases.~~

~~(g) Case staffings to develop, implement, and monitor treatment plans for disabled adults and elderly persons whose cases have been referred to the team. An adult protection team may provide consultation with respect to a disabled adult or elderly person who has not been referred to the team. The consultation must be provided at the request of a representative of the adult protective services program or at the request of any other professional involved with the disabled adult or elderly person or that person's guardian or other caregivers. In every such adult protection team case staffing consultation or staff activity involving a disabled adult or elderly person, an adult protective services program representative shall attend and participate.~~

~~(h) Service coordination and assistance, including the location of services available from other public and private agencies in the community.~~

~~(i) Such training services for program and other department employees as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling adult abuse, neglect, or exploitation cases.~~

~~(j) Education and community awareness campaigns on adult abuse, neglect, or exploitation in an effort to enable citizens to prevent, identify, and treat adult abuse, neglect, and exploitation in the community more successfully.~~

~~(2) The adult abuse, neglect, or exploitation cases that are appropriate for referral by the adult protective services program to adult protection teams for supportive services include, but are not limited to, cases involving:~~

~~(a) Unexplained or implausibly explained bruises, burns, fractures, or other injuries in a disabled adult or an elderly person.~~

~~(b) Sexual abuse or molestation, or sexual exploitation, of a disabled adult or elderly person.~~

~~(c) Reported medical, physical, or emotional neglect of a disabled adult or an elderly person.~~

~~(d) Reported financial exploitation of a disabled adult or elderly person.~~

In all instances in which an adult protection team is providing certain services to abused, neglected, or exploited vulnerable disabled adults or elderly persons, other offices and units of the department shall avoid duplicating the provisions of those services.

Section 40. Section 415.111, Florida Statutes, is amended to read:

415.111 Criminal penalties.—

(1) A person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person, or who knowingly and willfully prevents another person from doing so, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline registry and tracking system, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable disabled adult or elderly person, except as provided in ss. 415.101-415.113, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who has custody of records and documents the confidentiality of which is abrogated under s. 415.1045(3)(5) and who refuses to grant access to such records commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the reports to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 415.102. During the pendency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning the same vulnerable disabled adult or elderly person in accordance with s. 415.104 or s. 415.1045. If the law enforcement agency believes that there are indicators of abuse, neglect, or exploitation, it must immediately notify the department, which must assure the safety of the vulnerable disabled adult or elderly person. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(5) A person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person, or a person who advises another to make a false report, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(a) The department shall establish procedures for determining whether a false report of abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person has been made and for submitting all identifying information relating to such a false report to the local law enforcement agency as provided in this subsection and shall report annually to the Legislature the number of reports referred.

(b) Anyone making a report who is acting in good faith is immune from any liability under this subsection.

(6) Each state attorney shall establish and publish procedures to facilitate the prosecution of persons under this section and shall report to the Legislature annually the number of complaints that have resulted in the filing of an information or indictment under this section.

Section 41. Section 415.1111, Florida Statutes, is amended to read:

415.1111 Civil penalties.—

~~(1) A person who is named as a perpetrator in a confirmed report of abuse, neglect, or exploitation of a disabled adult or an elderly person is subject to civil penalties as follows:~~

~~(a) For the first offense, a penalty of \$250.~~

~~(b) For the second offense, a penalty of \$500.~~

~~(c) For the third and subsequent offenses, a penalty of \$1,000 per occurrence.~~

~~Second and subsequent offenses may be for the same type of abuse, neglect, or exploitation or for a different type, and may be perpetrated upon the same or a different disabled adult or elderly person.~~

~~(2) All fines received by the department under this section must be deposited in the Operations and Maintenance Trust Fund within the department. The Legislature shall annually appropriate from the fund an amount that is no less than the amount deposited under this section, to be expended only for the adult protective services program.~~

~~(1)(3) A vulnerable adult who has been abused, neglected, or exploited disabled adult or an elderly person who has been named as a victim in a confirmed report of abuse, neglect, or exploitation as specified in this chapter part has a cause of action against any perpetrator named in the confirmed report and may recover actual and punitive damages for such abuse, neglect, or exploitation. The action may be brought by the vulnerable disabled adult or elderly person, or that person's guardian, by a person or organization acting on behalf of the vulnerable disabled adult or elderly person with the consent of that person or that person's guardian, or by the personal representative of the estate of a deceased victim disabled adult or elderly person without regard to whether the cause of death resulted from the abuse, neglect, or exploitation. The action may be brought in any court of competent jurisdiction to enforce such action and to recover actual and punitive damages for any deprivation of or infringement on the rights of a vulnerable disabled adult or an elderly person. A party who prevails in any such action may be entitled to recover reasonable attorney's fees, costs of the action, and damages. The remedies provided in this section are in addition to and cumulative with other legal and administrative remedies available to a vulnerable disabled adult or an elderly person.~~

Section 42. Subsections (1), (2), and (5) of section 415.1113, Florida Statutes, are amended to read:

415.1113 Administrative fines for false report of abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person.—

(1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable disabled adult or an elderly person, or a person who counsels another to make a false report.

(2) If the department alleges that a person has knowingly and willfully filed a false report with the central abuse ~~hotline registry and tracking system~~, the department must file a notice of intent that alleges the name, age, and address of the individual; the facts constituting the allegation that the individual made a false report; and the administrative fine that the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.

(5) At the hearing, the department must prove by clear and convincing evidence that the person knowingly and willfully filed a false report with the central abuse ~~hotline registry and tracking system~~. The person has the right to be represented by legal counsel at the hearing.

Section 43. Section 415.113, Florida Statutes, is amended to read:

415.113 Statutory construction; treatment by spiritual means.—Nothing in ss. 415.101-415.112 shall be construed to mean a person is abused, neglected, or in need of emergency or protective services for the sole reason that the person relies upon and is, therefore, being furnished treatment by spiritual means through prayer alone in accordance with the tenets and practices of a well-recognized ~~recognized~~ church or religious denomination or organization; nor shall anything in such sections be construed to authorize, permit, or require any medical care or treatment in contravention of the stated or implied objection of such person. Such construction does not:

(1) Eliminate the requirement that such a case be reported to the department;

(2) Prevent the department from investigating such a case; or

(3) Preclude a court from ordering, when the health of the individual requires it, the provision of medical services by a licensed physician or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious denomination or organization.

Section 44. Sections 435.01, 435.02, 435.03, 435.04, 435.045, 435.05, 435.06, 435.07, 435.08, 435.09, 435.10, and 435.11, Florida Statutes, are designated as part I of chapter 435, Florida Statutes.

Section 45. Paragraph (a) of subsection (2) and paragraph (a) of subsection (3) of section 435.03, Florida Statutes, are amended to read:

435.03 Level 1 screening standards.—

(2) Any person for whom employment screening is required by statute must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under any of the following provisions of the Florida Statutes or under any similar statute of another jurisdiction:

(a) Section 415.111, relating to ~~adult~~ abuse, neglect, or exploitation of a vulnerable adult ~~aged persons or disabled adults~~.

(3) Standards must also ensure that the person:

(a) For employees and employers licensed or registered pursuant to chapter 400, and for employees and employers of developmental services institutions as defined in s. 393.063, intermediate care facilities for the developmentally disabled as defined in s. 393.063, and mental health treatment facilities as defined in s. 394.455, meets the requirements of part II ~~does not have a confirmed report of abuse, neglect, or exploitation as defined in s. 415.102(5), which has been uncontested or upheld under s. 415.103.~~

Section 46. Paragraphs (b) and (c) of subsection (1) and subsection (2) of section 435.05, Florida Statutes, are amended to read:

435.05 Requirements for covered employees.—Except as otherwise provided by law, the following requirements shall apply to covered employees:

(1)

(b) For level 1 screening, the employer must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. The Florida Department of Law Enforcement will conduct a search of its ~~When required, the employer must at the same time submit sufficient information to the Department of Children and Family Services to complete a check of its records relating to the abuse, neglect, and exploitation of vulnerable adults. The Florida Department of Law Enforcement and the Department of Children and Family Services will conduct searches of their records and will respond to the employer agency. The employer will inform the employee whether screening has revealed any disqualifying information.~~

(c) For level 2 screening, the employer or licensing agency must submit the information necessary for screening to the Florida Department of Law Enforcement within 5 working days after receiving it. ~~When required, the employer or licensing agency must also submit sufficient information to the Department of Children and Family Services to complete a check of its records.~~ The Florida Department of Law Enforcement will conduct a search of its criminal and juvenile records and will request that the Federal Bureau of Investigation conduct a search of its records for each employee for whom the request is made. The Florida Department of Law Enforcement ~~and the Department of Children and Family Services~~ will respond to the employer or licensing agency, and the employer or licensing agency will inform the employee whether screening has revealed disqualifying information.

(2) Unless otherwise prohibited by state or federal law, new employees may be placed on probationary status pending a determination of compliance with minimum standards set forth in this part chapter.

Section 47. Subsection (1) of section 435.07, Florida Statutes, is amended to read:

435.07 Exemptions from disqualification.—Unless otherwise provided by law, the provisions of this section shall apply to exemptions from disqualification.

(1) The appropriate licensing agency may grant to any employee otherwise disqualified from employment an exemption from disqualification for:

- (a) Felonies committed more than 3 years prior to the date of disqualification;
- (b) Misdemeanors prohibited under any of the Florida Statutes cited in this chapter or under similar statutes of other jurisdictions;
- (c) Offenses that were felonies when committed but are now misdemeanors;
- (d) Findings of delinquency; or
- (e) Commissions of acts of domestic violence as defined in s. 741.30; ~~or~~
- ~~(f) Confirmed reports of abuse, neglect, or exploitation of a vulnerable adult.~~

For the purposes of this subsection, the term “felonies” means both felonies prohibited under any of the Florida Statutes cited in this part chapter or under similar statutes of other jurisdictions.

Section 48. Section 435.08, Florida Statutes, is amended to read:

~~435.08 Payment for processing of fingerprints and, state criminal records checks, and abuse hotline checks.—Either the employer or the employee is responsible for paying the costs of screening. Payment shall be submitted to the Florida Department of Law Enforcement with the request for screening. When a search of the central abuse hotline is required, payment shall be submitted by separate check to the Department of Children and Family Services with the request for screening.~~

Section 49. Section 435.09, Florida Statutes, is amended to read:

~~435.09 Confidentiality of personnel background check information.—No criminal or, juvenile, or abuse hotline information obtained under this section may be used for any purpose other than determining whether persons meet the minimum standards for employment or for an owner or director of a covered service provider. The criminal records and juvenile records obtained by the department or by an employer are exempt from s. 119.07(1).~~

Section 50. Paragraph (g) of subsection (3) of section 20.43, Florida Statutes, is amended to read:

20.43 Department of Health.—There is created a Department of Health.

(3) The following divisions of the Department of Health are established:

(g) Division of Medical Quality Assurance, which is responsible for the following boards and professions established within the division:

1. Nursing assistants, as provided under s. 400.211.

- ~~2.~~ Health care services pools, as provided under s. 402.48.
- ~~2.3.~~ The Board of Acupuncture, created under chapter 457.
- ~~3.4.~~ The Board of Medicine, created under chapter 458.
- ~~4.5.~~ The Board of Osteopathic Medicine, created under chapter 459.
- ~~5.6.~~ The Board of Chiropractic Medicine, created under chapter 460.
- ~~6.7.~~ The Board of Podiatric Medicine, created under chapter 461.
- ~~7.8.~~ Naturopathy, as provided under chapter 462.
- ~~8.9.~~ The Board of Optometry, created under chapter 463.
- ~~9.10.~~ The Board of Nursing, created under chapter 464.
- ~~10.11.~~ The Board of Pharmacy, created under chapter 465.
- ~~11.12.~~ The Board of Dentistry, created under chapter 466.
- ~~12.13.~~ Midwifery, as provided under chapter 467.
- ~~13.14.~~ The Board of Speech-Language Pathology and Audiology, created under part I of chapter 468.
- ~~14.15.~~ The Board of Nursing Home Administrators, created under part II of chapter 468.
- ~~15.16.~~ The Board of Occupational Therapy, created under part III of chapter 468.
- ~~16.17.~~ Respiratory therapy, as provided under part V of chapter 468.
- ~~17.18.~~ Dietetics and nutrition practice, as provided under part X of chapter 468.
- ~~18.19.~~ The Board of Athletic Training, created under part XIII of chapter 468.
- ~~19.20.~~ The Board of Orthotists and Prosthetists, created under part XIV of chapter 468.
- ~~20.21.~~ Electrolysis, as provided under chapter 478.
- ~~21.22.~~ The Board of Massage Therapy, created under chapter 480.
- ~~22.23.~~ The Board of Clinical Laboratory Personnel, created under part III of chapter 483.
- ~~23.24.~~ Medical physicists, as provided under part IV of chapter 483.
- ~~24.25.~~ The Board of Opticianry, created under part I of chapter 484.

~~25.26.~~ The Board of Hearing Aid Specialists, created under part II of chapter 484.

~~26.27.~~ The Board of Physical Therapy Practice, created under chapter 486.

~~27.28.~~ The Board of Psychology, created under chapter 490.

~~28.29.~~ School psychologists, as provided under chapter 490.

~~29.30.~~ The Board of Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling, created under chapter 491.

The department may contract with the Agency for Health Care Administration who shall provide consumer complaint, investigative, and prosecutorial services required by the Division of Medical Quality Assurance, councils, or boards, as appropriate.

Section 51. Paragraph (h) of subsection (2) of section 39.202, Florida Statutes, is amended to read:

39.202 Confidentiality of reports and records in cases of child abuse or neglect.—

(2) Access to such records, excluding the name of the reporter which shall be released only as provided in subsection (4), shall be granted only to the following persons, officials, and agencies:

(h) Any appropriate official of the department responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable ~~disabled~~ adult ~~or elderly person~~, when carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable ~~disabled~~ adult ~~or elderly person~~; or

3. Employing and continuing employment of personnel of the department.

Section 52. Paragraphs (a) and (b) of subsection (3) of section 110.1127, Florida Statutes, are amended to read:

110.1127 Employee security checks.—

(3)(a) All positions in programs providing care to children, the developmentally disabled, or vulnerable adults ~~disabled adults, or elderly persons~~ for 15 hours or more per week; all permanent and temporary employee positions of the central abuse hotline; and all persons working under contract who have access to abuse records are deemed to be persons and positions of special trust or responsibility, and require employment screening

pursuant to chapter 435, using the level 2 standards set forth in that chapter.

(b) The employing agency may grant exemptions from disqualification from working with children, the developmentally disabled, or vulnerable adults ~~disabled adults, or elderly persons~~ as provided in s. 435.07.

Section 53. Paragraph (a) of subsection (12) of section 112.0455, Florida Statutes, is amended to read:

112.0455 Drug-Free Workplace Act.—

(12) DRUG-TESTING STANDARDS; LABORATORIES.—

(a) A laboratory may analyze initial or confirmation drug specimens only if:

1. The laboratory is licensed and approved by the Agency for Health Care Administration using criteria established by the United States Department of Health and Human Services as general guidelines for modeling the state drug testing program. Each applicant for licensure must comply with the following requirements:

a. Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee, or other similarly titled individual responsible for the daily operation of the laboratory, and of the financial officer, or other similarly titled individual who is responsible for the financial operation of the laboratory, including billings for services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

b. The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of an offense prohibited under the level 2 standards for screening set forth in chapter 435.

c. Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of screening requirements.

d. A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which

confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

e. Each applicant must submit to the agency, with its application, a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interests under the Medicaid or Medicare programs shall be accepted in lieu of this submission.

f. Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this sub-subparagraph.

g. A license may not be granted to any applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

h. The agency may deny or revoke licensure if the applicant:

(I) Has falsely represented a material fact in the application required by sub-subparagraph e. or sub-subparagraph f., or has omitted any material fact from the application required by sub-subparagraph e. or sub-subparagraph f.; or

(II) Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in sub-subparagraph e.

i. An application for license renewal must contain the information required under sub-subparagraphs e. and f.

2. The laboratory has written procedures to ensure chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

Section 54. Paragraphs (a), (b), and (c) of subsection (7) of section 119.07, Florida Statutes, are amended to read:

119.07 Inspection, examination, and duplication of records; exemptions.—

(7)(a) Any person or organization, including the Department of Children and Family Services, may petition the court for an order making public the records of the Department of Children and Family Services that pertain to investigations of alleged abuse, neglect, abandonment, or exploitation of a child or a vulnerable, a disabled adult, or an elderly person. The court shall determine if good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interest of the vulnerable disabled adult, elderly person, or child who is the focus of the investigation, and in the case of the child, the interest of that child's siblings, together with the privacy right of other persons identified in the reports against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Children and Family Services and the court system in providing vulnerable disabled adults, elderly persons, and children of this state with the protections enumerated in ss. 39.001 and 415.101. However, this subsection does not contravene ss. 39.202 and 415.107, which protect the name of any person reporting the abuse, neglect, or exploitation of a child or a vulnerable, a disabled adult, or an elderly person.

(b) In cases involving serious bodily injury to a child or a vulnerable, a disabled adult or an elderly person, the Department of Children and Family Services may petition the court for an order for the immediate public release of records of the department which pertain to the protective investigation of abuse, neglect, abandonment, or exploitation of the child, disabled adult, or elderly person who suffered serious bodily injury. The petition must be personally served upon the child or vulnerable, disabled adult, or elderly person, the child's parents or guardian, the legal guardian of that person, if any, and any person named as an alleged perpetrator in the report of

abuse, neglect, abandonment, or exploitation. The court must determine if good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the petition with the court. If the court has neither granted nor denied the petition within the 24-hour time period, the department may release to the public summary information including:

1. A confirmation that an investigation has been conducted concerning the alleged victim.
2. The dates and brief description of procedural activities undertaken during the department's investigation.
3. The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceedings, and the rulings of the court.

The summary information may not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the vulnerable ~~disabled adult or elderly person~~ or child who is the focus of the investigation and, in the case of the child, the interests of that child's siblings, together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this paragraph does not contravene ss. 39.202 and 415.107, which protect the name of any person reporting abuse, neglect, or exploitation of a child or a vulnerable, ~~a disabled adult, or an elderly person.~~

(c) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of and other identifying information with respect to any person identified in any protective investigation report ~~unfounded report or proposed confirmed report or report closed without classification, or in any report that has not yet been classified pursuant to s. 415.1045(7)~~, until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, neglect, or abandonment.

Section 55. Subsection (1) of section 232.50, Florida Statutes, is amended to read:

232.50 Child abuse, abandonment, and neglect policy.—Every school board shall by March 1, 1985:

(1) Post in a prominent place in each school a notice that, pursuant to chapter 39, all employees or agents of the district school board have an affirmative duty to report all actual or suspected cases of child abuse, abandonment, or neglect, have immunity from liability if they report such cases in good faith, and have a duty to comply with child protective investigations and all other provisions of law relating to child abuse, abandonment, and neglect. The notice shall also include the statewide toll-free telephone number of the central state abuse hotline registry.

Section 56. Subsection (4) and paragraph (b) of subsection (5) of section 242.335, Florida Statutes, are amended to read:

242.335 Personnel screening; Florida School for the Deaf and the Blind.—

(4) The Florida School for the Deaf and the Blind may not use the criminal records, ~~abuse registry information~~, private investigator findings, or information reference checks obtained by the school pursuant to this section for any purpose other than determining if a person meets the minimum standards for good moral character for personnel employed by the school. The criminal records, ~~abuse registry information~~, private investigator findings, and information from reference checks obtained by the Florida School for the Deaf and the Blind for determining the moral character of employees of the school are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(5) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(b) Use the criminal records, ~~abuse registry information~~, private investigator findings, or information from reference checks obtained under this section or information obtained from such records or findings for purposes other than screening for employment or release such information or records to persons for purposes other than screening for employment.

Section 57. Paragraph (a) of subsection (8) of section 320.0848, Florida Statutes, is amended to read:

320.0848 Persons who have disabilities; issuance of disabled parking permits; temporary permits; permits for certain providers of transportation services to persons who have disabilities.—

(8) A law enforcement officer may confiscate the disabled parking permit from any person who fraudulently obtains or unlawfully uses such a permit. A law enforcement officer may confiscate any disabled parking permit that is expired, reported as lost or stolen, or defaced, or that does not display a personal identification number.

(a) Beginning April 1, 1999, the permit number of each confiscated permit must be submitted to the Department of Highway Safety and Motor Vehicles, and the fact that the permit has been confiscated must be noted on the permitholder's record. If two permits issued to the same person have been confiscated, the Department of Highway Safety and Motor Vehicles shall refer the information to the central Florida abuse hotline of the Department of Children and Family Services for an investigation of potential abuse, neglect, or exploitation of the permit owner.

Section 58. Paragraph (c) of subsection (1) of section 381.0059, Florida Statutes, is amended to read:

381.0059 Background screening requirements for school health services personnel.—

(1)

(c) The person subject to the required background screening or his or her employer must pay the fees required to obtain the background screening. Payment for the screening ~~and the abuse registry check~~ must be submitted to the Department of Health. The Florida Department of Law Enforcement shall charge the Department of Health for a level 2 screening at a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3). The Department of Health shall establish a schedule of fees to cover the costs of the level 2 screening ~~and the abuse registry check~~. The applicant or his or her employer who pays for the required screening may be reimbursed by the Department of Health from funds designated for this purpose.

Section 59. Paragraph (d) of subsection (1) of section 381.60225, Florida Statutes, is amended to read:

381.60225 Background screening.—

(1) Each applicant for certification must comply with the following requirements:

(d) A provisional certification may be granted to the organization, agency, or entity when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard certification may be granted to the organization, agency, or entity upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 60. Paragraph (d) of subsection (7) of section 383.305, Florida Statutes, is amended to read:

383.305 Licensure; issuance, renewal, denial, suspension, revocation; fees; background screening.—

(7) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of

Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 61. Paragraph (d) of subsection (3) of section 390.015, Florida Statutes, is amended to read:

390.015 Application for license.—

(3) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 62. Paragraph (c) of subsection (5) and paragraph (d) of subsection (6) of section 393.067, Florida Statutes, are amended to read:

393.067 Licensure of residential facilities and comprehensive transitional education programs.—

(5) The applicant shall submit evidence which establishes the good moral character of the manager or supervisor of the facility or program and the direct service providers in the facility or program and its component centers or units. A license may be issued if all the screening materials have been

timely submitted; however, a license may not be issued or renewed if any of the direct service providers have failed the screening required by s. 393.0655.

(c) The department or a residential facility or comprehensive transitional education program may not use the criminal records or, juvenile records, ~~or abuse registry information~~ of a person obtained under this subsection for any purpose other than determining if that person meets the minimum standards for good moral character for a manager or supervisor of, or direct service provider in, such a facility or program. The criminal records or, juvenile records, ~~or abuse registry information~~ obtained by the department or a residential facility or comprehensive transitional education program for determining the moral character of a manager, supervisor, or direct service provider are exempt from s. 119.07(1).

(6) Each applicant for licensure as an intermediate care facility for the developmentally disabled must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 63. Paragraph (c) of subsection (1) of section 393.0674, Florida Statutes, is amended to read:

393.0674 Penalties.—

(1) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(c) Use information from the criminal records or central abuse hotline ~~registry~~ obtained under s. 393.0655, s. 393.066, or s. 393.067 for any purpose other than screening that person for employment as specified in those sections or release such information to any other person for any purpose other than screening for employment as specified in those sections.

Section 64. Paragraph (e) of subsection (5) of section 394.459, Florida Statutes, is amended to read:

394.459 Rights of patients.—

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(e) Each patient receiving mental health treatment in any facility shall have ready access to a telephone in order to report an alleged abuse. The facility staff shall orally and in writing inform each patient of the procedure for reporting abuse and shall make every reasonable effort to present the information in a language the patient understands. A written copy of that procedure, including the telephone number of the central abuse hotline registry and reporting forms, shall be posted in plain view.

Section 65. Paragraph (d) of subsection (12) of section 394.875, Florida Statutes, is amended to read:

394.875 Crisis stabilization units and residential treatment facilities; authorized services; license required; penalties.—

(12) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 66. Subsection (4) of section 395.0055, Florida Statutes, is amended to read:

395.0055 Background screening.—Each applicant for licensure must comply with the following requirements:

(4) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received

background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 67. Paragraph (d) of subsection (4) of section 395.0199, Florida Statutes, is amended to read:

395.0199 Private utilization review.—

(4) Each applicant for registration must comply with the following requirements:

(d) A provisional registration may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check and the Department of Law Enforcement background check~~, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A standard registration may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 68. Paragraph (g) of subsection (4) of section 395.3025, Florida Statutes, is amended to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:

(g) The Department of Children and Family Services or its agent, for the purpose of investigations of cases of abuse, neglect, or exploitation of children or vulnerable disabled adults or elderly persons.

Section 69. Subsection (3) of section 397.461, Florida Statutes, is amended to read:

397.461 Unlawful activities relating to personnel; penalties.—It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

(3) Use or release any criminal or juvenile ~~or central abuse registry~~ information obtained under this chapter for any purpose other than background checks of personnel for employment.

Section 70. Subsection (2) of section 400.022, Florida Statutes, is amended to read:

400.022 Residents' rights.—

(2) The licensee for each nursing home shall orally inform the resident of the resident's rights and provide a copy of the statement required by subsection (1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or district ombudsman council. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the district ombudsman council and central adult abuse hotline registry where complaints may be lodged.

Section 71. Paragraph (d) of subsection (4) of section 400.071, Florida Statutes, is amended to read:

400.071 Application for license.—

(4) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check and the Department of Law Enforcement background check~~, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards

and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 72. Paragraphs (a), (c), and (e) of subsection (2) and subsections (3) and (8) of section 400.215, Florida Statutes, are amended to read:

400.215 Personnel screening requirement.—

(2) Employers and employees shall comply with the requirements of s. 435.05.

(a) Notwithstanding the provisions of s. 435.05(1), facilities must have in their possession evidence that level 1 screening has been completed before allowing an employee to begin working with patients as provided in subsection (1). All information necessary for conducting background screening using level 1 standards as specified in s. 435.03(1) ~~and for conducting a search of the central abuse registry and tracking system as specified in s. 435.03(3)(a)~~ shall be submitted by the nursing facility to the agency. Results of the background screening ~~and the abuse registry check~~ shall be provided by the agency to the requesting nursing facility. ~~An applicant who has been qualified under a level 1 criminal screening and who, under penalty of perjury, attests to not having been classified in the central abuse registry and tracking system as a perpetrator in a confirmed report of abuse, neglect, or exploitation may be allowed to work on a probationary status in the nursing facility, under supervision, for a period not to exceed 30 days, pending the results of an abuse registry screening.~~

(c) The agency shall establish and maintain a database of background screening information which shall include the results of both level 1 and level 2 screening ~~and central abuse registry and tracking system checks~~. The Department of Law Enforcement shall timely provide to the agency, electronically, the results of each statewide screening for incorporation into the database. ~~The Department of Children and Family Services shall provide the agency with electronic access to the central abuse registry and tracking system. The agency shall search the registry to identify any confirmed report and shall access such report for incorporation into the database.~~ The agency shall, upon request from any facility, agency, or program required by or authorized by law to screen its employees or applicants, notify the administrator of the facility, agency, or program of the qualifying or disqualifying status of the employee or applicant named in the request.

(e) ~~Notwithstanding the confidentiality provisions of s. 415.107, the agency shall provide no later than 45 days after the effective date of this paragraph, a direct-access electronic screening capability to all enrolled facilities or agencies required by law to restrict employment to only an applicant who does not have a disqualifying report in the central abuse registry and tracking system. The agency shall, upon request, provide to such facility or agency a user code by which the facility or agency may query the listing of all persons disqualified because of a confirmed classification. The direct-access screening system shall allow for the electronic matching of an applicant's identifying information, including name, date of birth, race, sex, and social security number, against the listing of disqualified persons. The agency may charge a fee for issuing the user code sufficient to cover the~~

~~cost of establishing and maintaining the direct-access screening system. The direct-access screening system shall provide immediately to the user only the electronic notification of applicant clearance or disqualification. The system shall also maintain for appropriate entry into the agency screening database an electronic record of the inquiry on behalf of the applicant.~~

(3) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening ~~and the abuse registry check~~ shall be submitted to the agency. The agency shall establish a schedule of fees to cover the costs of level 1 and level 2 screening ~~and the abuse registry check~~. Facilities may reimburse employees for these costs. The Department of Law Enforcement shall charge the agency for a level 1 or level 2 screening a rate sufficient to cover the costs of such screening pursuant to s. 943.053(3). The agency shall, as allowable, reimburse nursing facilities for the cost of conducting background screening as required by this section. This reimbursement will not be subject to any rate ceilings or payment targets in the Medicaid Reimbursement plan.

(8) There is no monetary or unemployment liability on the part of, and no cause of action for damages arising against an employer that, upon notice of a disqualifying offense listed under chapter 435 ~~or a confirmed report of abuse, neglect, or exploitation~~ or an act of domestic violence, terminates the employee against whom the report was issued, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.

Section 73. Paragraph (g) of subsection (1) of section 400.414, Florida Statutes, is amended to read:

400.414 Denial, revocation, or suspension of license; imposition of administrative fine; grounds.—

(1) The agency may deny, revoke, or suspend any license issued under this part, or impose an administrative fine in the manner provided in chapter 120, for any of the following actions by an assisted living facility, any person subject to level 2 background screening under s. 400.4174, or any facility employee:

(g) ~~A determination that confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, which has been upheld following a chapter 120 hearing or a waiver of such proceedings where the perpetrator is an employee, volunteer, administrator, or owner, or person who otherwise has access to the residents of a facility~~ does not meet the criteria specified in s. 435.03(2), and the owner or administrator has not taken action to remove the person perpetrator. Exemptions from disqualification may be granted as set forth in s. 435.07. No administrative action may be taken against the facility if the person perpetrator is granted an exemption.

Section 74. Paragraph (c) of subsection (1) and subsection (3) of section 400.4174, Florida Statutes, are amended to read:

400.4174 Background screening; exemptions; ~~reports of abuse in facilities.~~—

(1)

(c) The agency may grant a provisional license to a facility applying for an initial license when each individual required by this subsection to undergo screening has completed the ~~abuse registry~~ and Department of Law Enforcement background checks, but has not yet received results from the Federal Bureau of Investigation, or when a request for an exemption from disqualification has been submitted to the agency pursuant to s. 435.07, but a response has not been issued.

~~(3) When an employee, volunteer, administrator, or owner of a facility is the subject of a confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, and the protective investigator knows that the individual is an employee, volunteer, administrator, or owner of a facility, the agency shall be notified of the confirmed report.~~

Section 75. Subsection (4) of section 400.426, Florida Statutes, is amended to read:

400.426 Appropriateness of placements; examinations of residents.—

(4) If possible, each resident shall have been examined by a licensed physician or a licensed nurse practitioner within 60 days before admission to the facility. The signed and completed medical examination report shall be submitted to the owner or administrator of the facility who shall use the information contained therein to assist in the determination of the appropriateness of the resident's admission and continued stay in the facility. The medical examination report shall become a permanent part of the record of the resident at the facility and shall be made available to the agency during inspection or upon request. An assessment that has been completed through the Comprehensive Assessment and Review for Long-Term Care Services (CARES) Program fulfills the requirements for a medical examination under this subsection and s. 400.407(4)(3)(b)6.

Section 76. Subsection (2) of section 400.428, Florida Statutes, is amended to read:

400.428 Resident bill of rights.—

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the district ombudsman council and central adult abuse hotline registry and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the district human rights advocacy committee, where complaints may be lodged. The facility must ensure a resident's access to a telephone to call the district ombudsman council, central adult abuse hotline registry, Advocacy Center for Persons with Disabilities, Inc., and district human rights advocacy committee.

Section 77. Subsection (20) of section 400.462, Florida Statutes, is amended to read:

400.462 Definitions.—As used in this part, the term:

(20) “Screening” means the assessment of the background of home health agency personnel, nurse registry personnel, and persons registered under s. 400.509 and includes employment or contractual history checks, ~~records checks of the department’s central abuse hotline under chapter 415 relating to vulnerable adults,~~ and statewide criminal records correspondence checks through the Department of Law Enforcement.

Section 78. Paragraph (d) of subsection (4) of section 400.471, Florida Statutes, is amended to read:

400.471 Application for license; fee; provisional license; temporary permit.—

(4) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check and the Department of Law Enforcement background check,~~ but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard license may be granted to the licensee upon the agency’s receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency’s receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 79. Section 400.495, Florida Statutes, is amended to read:

400.495 Notice of toll-free telephone number for central abuse hotline registry.—On or before the first day home health services are provided to a patient, any home health agency or nurse registry licensed under this part must inform the patient and his or her immediate family, if appropriate, of the right to report abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse hotline registry must be provided to patients in a manner that is clearly legible and must include the words: “To report abuse, neglect, or exploitation, please call toll-free ...(phone number)....” The Agency for Health Care Administration shall adopt rules that provide for 90 days’ advance notice of a change in the toll-free telephone number and that outline due process procedures, as provided under chapter 120, for home health agency personnel and nurse registry personnel who are reported to the central abuse hotline registry. Home health agencies and nurse registries shall establish appropriate policies and procedures for providing such notice to patients.

Section 80. Paragraph (d) of subsection (2) of section 400.506, Florida Statutes, is amended to read:

400.506 Licensure of nurse registries; requirements; penalties.—

(2) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and the Department of Law Enforcement background check but the agency has not yet received background screening results from the Federal Bureau of Investigation. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 81. Subsection (6) of section 400.509, Florida Statutes, is amended to read:

400.509 Registration of particular service providers exempt from licensure; certificate of registration; regulation of registrants.—

(6) On or before the first day on which services are provided to a patient or client, any registrant under this part must inform the patient or client and his or her immediate family, if appropriate, of the right to report abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse hotline registry must be provided to patients or clients in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call toll-free ...(phone number)...." Registrants must establish appropriate policies and procedures for providing such notice to patients or clients.

Section 82. Subsections (3), (4), (5), and (6) and paragraph (a) of subsection (7) of section 400.512, Florida Statutes, are amended to read:

400.512 Screening of home health agency personnel; nurse registry personnel; and companions and homemakers.—The agency shall require employment or contractor screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for home health agency personnel; persons referred for employment by nurse registries; and persons employed by companion or homemaker services registered under s. 400.509.

(3) As a prerequisite to operating as a home health agency, nurse registry, or companion or homemaker service under s. 400.509, the administrator

or managing employee, respectively, must submit to the agency his or her name and any other information necessary to conduct a complete screening according to this section. The agency shall submit the information to the Department of Law Enforcement ~~and the department's abuse hotline~~ for state processing. The agency shall review the record of the administrator or manager with respect to the offenses specified in this section and shall notify the owner of its findings. If disposition information is missing on a criminal record, the administrator or manager, upon request of the agency, must obtain and supply within 30 days the missing disposition information to the agency. Failure to supply missing information within 30 days or to show reasonable efforts to obtain such information will result in automatic disqualification.

(4) Proof of compliance with the screening requirements of chapter 435 shall be accepted in lieu of the requirements of this section if the person has been continuously employed or registered without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened ~~through the central abuse registry and tracking system of the department and~~ by the Department of Law Enforcement. A home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 shall directly provide proof of compliance to another home health agency, nurse registry, or companion or homemaker service registered under s. 400.509. The recipient home health agency, nurse registry, or companion or homemaker service registered under s. 400.509 may not accept any proof of compliance directly from the person who requires screening. Proof of compliance with the screening requirements of this section shall be provided upon request to the person screened by the home health agencies; nurse registries; or companion or homemaker services registered under s. 400.509.

(5) There is no monetary liability on the part of, and no cause of action for damages arises against, a licensed home health agency, licensed nurse registry, or companion or homemaker service registered under s. 400.509, that, upon notice that the employee or contractor has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction ~~of a confirmed report of adult abuse, neglect, or exploitation, terminates the employee or contractor against whom the report was issued, whether or not the employee or contractor has filed for an exemption with the agency in accordance with chapter 435 and whether or not the time for filing has expired.~~

(6) The costs of processing the statewide correspondence criminal records checks ~~and the search of the department's central abuse hotline~~ must be borne by the home health agency; the nurse registry; or the companion or homemaker service registered under s. 400.509, or by the person being screened, at the discretion of the home health agency, nurse registry, or s. 400.509 registrant.

(7)(a) It is a misdemeanor of the first degree, punishable under s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment a material fact used in making a determination as to such person's qualifications to be an employee under this section;

2. Operate or attempt to operate an entity licensed or registered under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or

3. Use information from the criminal records or ~~central abuse hotline~~ obtained under this section for any purpose other than screening that person for employment as specified in this section or release such information to any other person for any purpose other than screening for employment under this section.

Section 83. Paragraph (c) of subsection (1) and subsection (3) of section 400.5572, Florida Statutes, are amended to read:

400.5572 Background screening.—

(1)

(c) The agency may grant a provisional license to an adult day care center applying for an initial license when each individual required by this subsection to undergo screening has completed the ~~abuse registry~~ and Department of Law Enforcement background check checks, but has not yet received results from the Federal Bureau of Investigation, or when a request for an exemption from disqualification has been submitted to the agency pursuant to s. 435.07, but a response has not been issued.

~~(3) When an employee, volunteer, operator, or owner of an adult day care center is the subject of a confirmed report of adult abuse, neglect, or exploitation, as defined in s. 415.102, and the protective investigator knows that the individual is an employee, volunteer, operator, or owner of a center, the agency shall be notified of the confirmed report.~~

Section 84. Subsection (2) of section 400.628, Florida Statutes, is amended to read:

400.628 Residents' bill of rights.—

(2) The provider shall ensure that residents and their legal representatives are made aware of the rights, obligations, and prohibitions set forth in this part. Residents must also be given the names, addresses, and telephone numbers of the district ombudsman council and the central adult abuse hotline ~~registry~~ where they may lodge complaints.

Section 85. Paragraph (d) of subsection (4) of section 400.801, Florida Statutes, is amended to read:

400.801 Homes for special services.—

(4) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 86. Paragraph (d) of subsection (3) of section 400.805, Florida Statutes, is amended to read:

400.805 Transitional living facilities.—

(3) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 87. Paragraph (d) of subsection (5) of section 400.906, Florida Statutes, is amended to read:

400.906 Initial application for license.—

(5) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 88. Subsection (10) of section 400.931, Florida Statutes, is amended to read:

400.931 Application for license; fee; provisional license; temporary permit.—

(10) When a change of the general manager of a home medical equipment provider occurs, the licensee must notify the agency of the change within 45 days thereof and must provide evidence of compliance with the background screening requirements in subsection (5); except that a general manager who has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but for whom background screening results from the Federal Bureau of Investigation have not yet been received, may be employed pending receipt of the Federal Bureau of Investigation background screening report. An individual may not continue to serve as general manager if the Federal Bureau of Investigation background screening report indicates any violation of background screening standards.

Section 89. Section 400.95, Florida Statutes, is amended to read:

400.95 Notice of toll-free telephone number for central abuse hotline registry.—On or before the first day home medical equipment is delivered to the patient's home, any home medical equipment provider licensed under this part must inform the consumer and his or her immediate family, if appropriate, of the right to report abusive, neglectful, or exploitative practices. The statewide toll-free telephone number for the central abuse hotline registry must be provided to consumers in a manner that is clearly legible and must include the words: "To report abuse, neglect, or exploitation, please call toll-free 1-800-962-2873." Home medical equipment providers shall establish appropriate policies and procedures for providing such notice to consumers.

Section 90. Subsections (3), (4), (5), and (6) and paragraph (a) of subsection (7) of section 400.953, Florida Statutes, are amended to read:

400.953 Background screening of home medical equipment provider personnel.—The agency shall require employment screening as provided in chapter 435, using the level 1 standards for screening set forth in that chapter, for home medical equipment provider personnel.

(3) Proof of compliance with the screening requirements of s. 110.1127, s. 393.0655, s. 394.4572, s. 397.451, s. 402.305, s. 402.313, s. 409.175, s. 464.008, or s. 985.407 or this part must be accepted in lieu of the requirements of this section if the person has been continuously employed in the same type of occupation for which he or she is seeking employment without a breach in service that exceeds 180 days, the proof of compliance is not more than 2 years old, and the person has been screened ~~through the central abuse registry and tracking system of the department~~ and by the Department of Law Enforcement. An employer or contractor shall directly provide proof of compliance to another employer or contractor, and a potential employer or contractor may not accept any proof of compliance directly from the person requiring screening. Proof of compliance with the screening requirements of this section shall be provided, upon request, to the person screened by the home medical equipment provider.

(4) There is no monetary liability on the part of, and no cause of action for damages arising against, a licensed home medical equipment provider that, upon notice that an employee has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction of a confirmed report of adult abuse, neglect, or exploitation under chapter 415, terminates the employee ~~against whom the report was issued,~~ whether or not the employee has filed for an exemption with the agency and whether or not the time for filing has expired.

(5) The costs of processing the statewide correspondence criminal records checks ~~and the search of the department's central abuse registry~~ must be borne by the home medical equipment provider or by the person being screened, at the discretion of the home medical equipment provider.

(6) Neither the agency nor the home medical equipment provider may use the criminal records ~~or, juvenile records, or central abuse registry information~~ of a person for any purpose other than determining whether that person meets minimum standards of good moral character for home medical equipment provider personnel.

(7)(a) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

1. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for paid employment a material fact used in making a determination as to the person's qualifications to be an employee under this section;

2. Operate or attempt to operate an entity licensed under this part with persons who do not meet the minimum standards for good moral character as contained in this section; or

3. Use information from the criminal records ~~or central abuse registry~~ obtained under this section for any purpose other than screening that person for employment as specified in this section, or release such information to any other person for any purpose other than screening for employment under this section.

Section 91. Subsection (1) of section 400.955, Florida Statutes, is amended to read:

400.955 Procedures for screening of home medical equipment provider personnel.—

(1) A person employed by a home medical equipment provider shall, within 5 working days after starting to work, submit to the home medical equipment provider a complete set of information necessary to conduct a screening under this section. The person must sign an affidavit stating whether he or she meets the minimum standards for good moral character under this section. The home medical equipment provider shall submit the information to the Department of Law Enforcement ~~and to the department's central abuse registry and tracking system~~ for processing. If disposition information is missing on a criminal record, it is the responsibility of the person being screened to obtain and supply the missing information within 30 days. Failure to supply the missing information or to show reasonable efforts to obtain such information will result in automatic disqualification for employment.

Section 92. Paragraph (d) of subsection (10) of section 400.962, Florida Statutes, is amended to read:

400.962 License required; license application.—

(10)

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check~~ and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation; however, the person may not continue to serve if the report indicates any violation of background screening standards

and a disqualification exemption has not been granted by the agency as set forth in chapter 435.

Section 93. Subsections (4) and (8) of section 400.964, Florida Statutes, are amended to read:

400.964 Personnel screening requirement.—

(4) The applicant is responsible for paying the fees associated with obtaining the required screening. Payment for the screening ~~and the abuse registry check~~ must be submitted to the agency as prescribed by the agency.

(8) There is no monetary or unemployment liability on the part of, and no cause of action for damages arises against an employer that, upon notice of a disqualifying offense listed under chapter 435 ~~or a confirmed report of abuse, neglect, or exploitation~~ or an act of domestic violence, terminates the employee ~~against whom the report was issued~~, whether or not the employee has filed for an exemption with the Department of Health or the Agency for Health Care Administration.

Section 94. Paragraph (d) of subsection (2) of section 402.3025, Florida Statutes, is amended to read:

402.3025 Public and nonpublic schools.—For the purposes of ss. 402.301-402.319, the following shall apply:

(2) NONPUBLIC SCHOOLS.—

(d)1. Programs for children who are at least 3 years of age, but under 5 years of age, which are not licensed under ss. 402.301-402.319 shall substantially comply with the minimum child care standards promulgated pursuant to ss. 402.305-402.3057.

2. The department or local licensing agency shall enforce compliance with such standards, where possible, to eliminate or minimize duplicative inspections or visits by staff enforcing the minimum child care standards and staff enforcing other standards under the jurisdiction of the department.

3. The department or local licensing agency may commence and maintain all proper and necessary actions and proceedings for any or all of the following purposes:

a. To protect the health, sanitation, safety, and well-being of all children under care.

b. To enforce its rules and regulations.

c. To use corrective action plans, whenever possible, to attain compliance prior to the use of more restrictive enforcement measures.

d. To make application for injunction to the proper circuit court, and the judge of that court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction, or both, restraining any

person from violating or continuing to violate any of the provisions of ss. 402.301-402.319. Any violation of this section or of the standards applied under ss. 402.305-402.3057 which threatens harm to any child in the school's programs for children who are at least 3 years of age, but are under 5 years of age, or repeated violations of this section or the standards under ss. 402.305-402.3057, shall be grounds to seek an injunction to close a program in a school.

e. To impose an administrative fine, not to exceed \$100, for each violation of the minimum child care standards promulgated pursuant to ss. 402.305-402.3057.

4. It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person willfully, knowingly, or intentionally to:

a. Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any required written documentation for exclusion from licensure pursuant to this section a material fact used in making a determination as to such exclusion; or

b. Use information from the criminal records or ~~central abuse registry~~ obtained under s. 402.305 or s. 402.3055 for any purpose other than screening that person for employment as specified in those sections or release such information to any other person for any purpose other than screening for employment as specified in those sections.

5. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any person willfully, knowingly, or intentionally to use information from the juvenile records of any person obtained under s. 402.305 or s. 402.3055 for any purpose other than screening for employment as specified in those sections or to release information from such records to any other person for any purpose other than screening for employment as specified in those sections.

Section 95. Paragraph (c) of subsection (5) of section 402.3125, Florida Statutes, is amended to read:

402.3125 Display and appearance of license; posting of violations; information to be provided to parents.—

(5) The department shall develop a model brochure for distribution by the department and by local licensing agencies to every child care facility in the state. Pursuant thereto:

(c) The brochure shall, at a minimum, contain the following information:

1. A statement that the facility is licensed and has met state standards for licensure as established by s. 402.305 or that the facility is licensed by a local licensing agency and has met or exceeded the state standards, pursuant to ss. 402.306 and 402.307. Such statement shall include a listing of specific standards that licensed facilities must meet pursuant to s. 402.305.

2. A statement indicating that information about the licensure status of the child care facility can be obtained by telephoning the department office or the office of the local licensing agency issuing the license at a telephone number or numbers which shall be printed upon or otherwise affixed to the brochure.

3. The statewide toll-free telephone number of the central Florida abuse hotline Registry, together with a notice that reports of suspected and actual cases of child physical abuse, sexual abuse, and neglect are received and referred for investigation by the hotline registry.

4. The date that the current license for the facility was issued and the date of its scheduled expiration if it is not renewed.

5. Any other information relating to competent child care that the department deems would be helpful to parents and other caretakers in their selection of a child care facility.

Section 96. Paragraph (d) of subsection (6) of section 402.313, Florida Statutes, is amended to read:

402.313 Family day care homes.—

(6) The department shall prepare a brochure on family day care for distribution by the department and by local licensing agencies, if appropriate, to family day care homes for distribution to parents utilizing such child care, and to all interested persons, including physicians and other health professionals; mental health professionals; school teachers or other school personnel; social workers or other professional child care, foster care, residential, or institutional workers; and law enforcement officers. The brochure shall, at a minimum, contain the following information:

(d) The statewide toll-free telephone number of the central Florida abuse hotline Registry, together with a notice that reports of suspected and actual child physical abuse, sexual abuse, and neglect are received and referred for investigation by the hotline registry.

Section 97. Paragraph (b) of subsection (11) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies.—

(11)

(b) It is unlawful for any person, agency, summer day camp, or summer 24-hour camp providing care for children to:

1. Willfully or intentionally fail to comply with the requirements for the screening of personnel or the dismissal of personnel found not to be in compliance with the requirements for good moral character as specified in paragraph (4)(a).

2. Use information from the criminal records or ~~central abuse registry~~ obtained under this section for any purpose other than screening a person for employment as specified in this section or to release such information to any other person for any purpose other than screening for employment as specified in this section.

Section 98. Subsection (29) of section 409.912, Florida Statutes, is amended to read:

409.912 Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. The agency shall maximize the use of prepaid per capita and prepaid aggregate fixed-sum basis services when appropriate and other alternative service delivery and reimbursement methodologies, including competitive bidding pursuant to s. 287.057, designed to facilitate the cost-effective purchase of a case-managed continuum of care. The agency shall also require providers to minimize the exposure of recipients to the need for acute inpatient, custodial, and other institutional care and the inappropriate or unnecessary use of high-cost services.

(29) Each managed care plan that is under contract with the agency to provide health care services to Medicaid recipients shall annually conduct a background check with the Florida Department of Law Enforcement of all persons with ownership interest of 5 percent or more or executive management responsibility for the managed care plan and shall submit to the agency information concerning any such person who has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any of the offenses listed in s. 435.03 ~~or has a confirmed report of abuse, neglect, or exploitation pursuant to chapter 415.~~

Section 99. Subsection (5) of section 430.205, Florida Statutes, is amended to read:

430.205 Community care service system.—

(5) Any person who has been classified as a functionally impaired elderly person is eligible to receive community-care-for-the-elderly core services. Those elderly persons who are determined by adult protective investigations services to be vulnerable adults ~~elderly persons~~ in need of services, pursuant to s. 415.104(3)(b) ~~415.1045(2)(b)~~, or to be victims of abuse, neglect, or exploitation who are in need of immediate services to prevent further harm and are referred by the adult protective services program, shall be given primary consideration for receiving community-care-for-the-elderly services. As used in this subsection, “primary consideration” means that an assessment and services must commence within 72 hours after referral to the department or as established in accordance with department contracts by local protocols developed between department service providers and the adult protective services program.

Section 100. Subsection (1) of section 447.208, Florida Statutes, is amended to read:

447.208 Procedure with respect to certain appeals under s. 447.207.—

(1) Any person filing an appeal pursuant to subsection (8) or subsection (9) of s. 447.207 shall be entitled to a hearing pursuant to subsections (4) and (5) of s. 447.503 and in accordance with chapter 120; however, the hearing shall be conducted within 30 days of the filing of an appeal with the commission, unless an extension of time is granted by the commission for good cause ~~or unless the basis for the appeal is an allegation of abuse or neglect under s. 415.1075, in which case the hearing by the Public Employees Relations Commission may not be held until the confirmed report of abuse or neglect has been upheld pursuant to the procedures for appeal in s. 415.1075.~~ Discovery may be granted only upon a showing of extraordinary circumstances. A party requesting discovery shall demonstrate a substantial need for the information requested and an inability to obtain relevant information by other means. To the extent that chapter 120 is inconsistent with these provisions, the procedures contained in this section shall govern.

Section 101. Section 447.401, Florida Statutes, is amended to read:

447.401 Grievance procedures.—Each public employer and bargaining agent shall negotiate a grievance procedure to be used for the settlement of disputes between employer and employee, or group of employees, involving the interpretation or application of a collective bargaining agreement. Such grievance procedure shall have as its terminal step a final and binding disposition by an impartial neutral, mutually selected by the parties; however, when the issue under appeal is an allegation of abuse, abandonment, or neglect by an employee under s. 39.201 or ~~s. 415.1034 s. 415.1075,~~ the grievance may not be decided until the abuse, abandonment, or neglect of a child has been judicially determined ~~or until a confirmed report of abuse or neglect of a disabled adult or elderly person has been upheld pursuant to the procedures for appeal in s. 415.1075.~~ However, an arbiter or other neutral shall not have the power to add to, subtract from, modify, or alter the terms of a collective bargaining agreement. If an employee organization is certified as the bargaining agent of a unit, the grievance procedure then in existence may be the subject of collective bargaining, and any agreement which is reached shall supersede the previously existing procedure. All public employees shall have the right to a fair and equitable grievance procedure administered without regard to membership or nonmembership in any organization, except that certified employee organizations shall not be required to process grievances for employees who are not members of the organization. A career service employee shall have the option of utilizing the civil service appeal procedure, an unfair labor practice procedure, or a grievance procedure established under this section, but such employee is precluded from availing himself or herself to more than one of these procedures.

Section 102. Subsection (5) of section 455.712, Florida Statutes, is amended to read:

455.712 Business establishments; requirements for active status licenses.—

(5) This section applies to any business establishment registered, permitted, or licensed by the department to do business. Business establishments

include, but are not limited to, dental laboratories, electrology facilities, massage establishments, and pharmacies, ~~and health care services pools.~~

Section 103. Paragraph (e) of subsection (1) of section 464.018, Florida Statutes, is amended to read:

464.018 Disciplinary actions.—

(1) The following acts shall be grounds for disciplinary action set forth in this section:

(e) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction a confirmed report of abuse, neglect, or exploitation as defined in s. 415.102(6) which has been uncontested or upheld under the procedures of s. 415.1075; or having committed an act which constitutes domestic violence as defined in s. 741.28.

Section 104. Paragraph (f) of subsection (4) of section 468.520, Florida Statutes, is amended to read:

468.520 Definitions.—As used in this part:

(4) “Employee leasing” means an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client. The term does not include the following:

(f) A health care services pool licensed under s. ~~400.980~~ 402.48, unless otherwise engaged in business as an employee leasing company.

Section 105. Section 468.826, Florida Statutes, is amended to read:

468.826 Exemption from liability.—If an employer terminates or denies employment to a certified nursing assistant whose certification is inactive as shown on the certified nursing assistant registry or whose name appears ~~on the central abuse registry and tracking system of the Department of Children and Family Services or on a criminal screening report of the Department of Law Enforcement,~~ the employer is not civilly liable for such termination and a cause of action may not be brought against the employer for damages, regardless of whether the employee has filed for an exemption from the department under s. 468.824(1). There may not be any monetary liability on the part of, and a cause of action for damages may not arise against, any licensed facility, its governing board or members thereof, medical staff, disciplinary board, agents, investigators, witnesses, employees, or any other person for any action taken in good faith without intentional fraud in carrying out this section.

Section 106. Subsections (1) and (2) of section 468.828, Florida Statutes, are amended to read:

468.828 Background screening information; rulemaking authority.—

(1) The Agency for Health Care Administration shall allow the department to electronically access its background screening database and records, ~~and the Department of Children and Family Services shall allow the department to electronically access its central abuse registry and tracking system under chapter 415.~~

(2) An employer, or an agent thereof, may not use criminal records ~~or~~ juvenile records, ~~or information obtained from the central abuse hotline under chapter 415~~ for any purpose other than determining if the person meets the requirements of this part. Such records and information obtained by the department shall remain confidential and exempt from s. 119.07(1).

Section 107. Paragraph (d) of subsection (2) of section 483.101, Florida Statutes, is amended to read:

483.101 Application for clinical laboratory license.—

(2) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check and the Department of Law Enforcement background check~~ but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435 but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 108. Paragraph (d) of subsection (2) of section 483.30, Florida Statutes, is amended to read:

483.30 Licensing of centers.—

(2) Each applicant for licensure must comply with the following requirements:

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for ~~the abuse registry background check and the Department of Law Enforcement background check~~, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency

as set forth in chapter 435 but a response has not yet been issued. A license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

Section 109. Paragraph (a) of subsection (2) of section 509.032, Florida Statutes, is amended to read:

509.032 Duties.—

(2) INSPECTION OF PREMISES.—

(a) The division has responsibility and jurisdiction for all inspections required by this chapter. The division has responsibility for quality assurance. Each licensed establishment shall be inspected at least biannually and at such other times as the division determines is necessary to ensure the public's health, safety, and welfare. The division shall establish a system to determine inspection frequency. Public lodging units classified as resort condominiums or resort dwellings are not subject to this requirement, but shall be made available to the division upon request. If, during the inspection of a public lodging establishment classified for renting to transient or nontransient tenants, an inspector identifies vulnerable disabled adults or elderly persons who appear to be victims of neglect, as defined in s. 415.102, or, in the case of a building that is not equipped with automatic sprinkler systems, tenants or clients who may be unable to self-preserve in an emergency, the division shall convene meetings with the following agencies as appropriate to the individual situation: the Department of Health, the Department of Elderly Affairs, the area agency on aging, the local fire marshal, the landlord and affected tenants and clients, and other relevant organizations, to develop a plan which improves the prospects for safety of affected residents and, if necessary, identifies alternative living arrangements such as facilities licensed under part II or part III of chapter 400.

Section 110. Subsection (3) of section 744.309, Florida Statutes, is amended to read:

744.309 Who may be appointed guardian of a resident ward.—

(3) DISQUALIFIED PERSONS.—No person who has been convicted of a felony or who, from any incapacity or illness, is incapable of discharging the duties of a guardian, or who is otherwise unsuitable to perform the duties of a guardian, shall be appointed to act as guardian. Further, no person who has been judicially determined to have committed abuse, abandonment, or neglect against a child as defined in s. 39.01 or s. 984.03(1), (2), and (39), or who has been found guilty of, regardless of adjudication, or

~~entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction, a confirmed report of abuse, neglect, or exploitation which has been uncontested or upheld pursuant to the provisions of ss. 415.104 and 415.1075 shall be appointed to act as a guardian. Except as provided in subsection (5) or subsection (6), a person who provides substantial services to the proposed ward in a professional or business capacity, or a creditor of the proposed ward, may not be appointed guardian and retain that previous professional or business relationship. A person may not be appointed a guardian if he or she is in the employ of any person, agency, government, or corporation that provides service to the proposed ward in a professional or business capacity, except that a person so employed may be appointed if he or she is the spouse, adult child, parent, or sibling of the proposed ward and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the proposed ward's best interest. The court may not appoint a guardian in any other circumstance in which a conflict of interest may occur.~~

Section 111. Subsection (12) of section 744.474, Florida Statutes, is amended to read:

744.474 Reasons for removal of guardian.—A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(12) Having been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under s. 435.03 or under any similar statute of another jurisdiction ~~A confirmed report pursuant to a protective investigation made by the Department of Children and Family Services, which has been uncontested or has been upheld, in accordance with s. 415.1075, that the guardian has abused, neglected, or exploited the ward.~~

Section 112. Section 744.7081, Florida Statutes, is amended to read:

744.7081 Access to records by Statewide Public Guardianship Office; confidentiality.—Notwithstanding any other provision of law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, which are necessary to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the Statewide Public Guardianship Office upon that office's request. Any confidential or exempt information provided to the Statewide Public Guardianship Office shall continue to be held confidential or exempt as otherwise provided by law. All records held by the Statewide Public Guardianship Office relating to the medical, financial, or mental health of ~~vulnerable citizens who are elderly persons or disabled~~ adults as defined in chapter 415, persons with a developmental disability as defined in chapter 393, or persons with a mental illness as defined in chapter 394, shall be confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This section is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2004, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 113. Paragraph (a) of subsection (6) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act; definitions; legislative findings, purpose, and intent; criteria; designation; registration; community and public notification; immunity; penalties.—

(6) REGISTRATION.—

(a) A sexual predator must register with the department by providing the following information to the department:

1. Name, social security number, age, race, sex, date of birth, height, weight, hair and eye color, photograph, address of legal residence and address of any current temporary residence, including a rural route address and a post office box, date and place of any employment, date and place of each conviction, fingerprints, and a brief description of the crime or crimes committed by the offender. A post office box shall not be provided in lieu of a physical residential address. If the sexual predator's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual predator shall also provide to the department written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If a sexual predator's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual predator shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. Any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and, ~~treatment, and abuse registry~~ records; and evidentiary genetic markers when available.

Section 114. Paragraph (e) of subsection (5) of section 916.107, Florida Statutes, is amended to read:

916.107 Rights of forensic clients.—

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(e) Each client committed pursuant to this chapter shall have ready access to a telephone in order to report an alleged abuse. The facility or program staff shall orally and in writing inform each client of the procedure for reporting abuse and shall present the information in a language the client understands. A written copy of that procedure, including the telephone number of the central abuse hotline registry and reporting forms, shall be posted in plain view.

Section 115. Paragraph (a) of subsection (4) of section 943.0585, Florida Statutes, is amended to read:

943.0585 Court-ordered expunction of criminal history records.—The courts of this state have jurisdiction over their own procedures, including the maintenance, expunction, and correction of judicial records containing criminal history information to the extent such procedures are not inconsistent with the conditions, responsibilities, and duties established by this section. Any court of competent jurisdiction may order a criminal justice agency to expunge the criminal history record of a minor or an adult who complies with the requirements of this section. The court shall not order a criminal justice agency to expunge a criminal history record until the person seeking to expunge a criminal history record has applied for and received a certificate of eligibility for expunction pursuant to subsection (2). A criminal history record that relates to a violation of chapter 794, s. 800.04, s. 817.034, s. 827.071, chapter 839, s. 893.135, or a violation enumerated in s. 907.041 may not be expunged, without regard to whether adjudication was withheld, if the defendant was found guilty of or pled guilty or nolo contendere to the offense, or if the defendant, as a minor, was found to have committed, or pled guilty or nolo contendere to committing, the offense as a delinquent act. The court may only order expunction of a criminal history record pertaining to one arrest or one incident of alleged criminal activity, except as provided in this section. The court may, at its sole discretion, order the expunction of a criminal history record pertaining to more than one arrest if the additional arrests directly relate to the original arrest. If the court intends to order the expunction of records pertaining to such additional arrests, such intent must be specified in the order. A criminal justice agency may not expunge any record pertaining to such additional arrests if the order to expunge does not articulate the intention of the court to expunge a record pertaining to more than one arrest. This section does not prevent the court from ordering the expunction of only a portion of a criminal history record pertaining to one arrest or one incident of alleged criminal activity. Notwithstanding any law to the contrary, a criminal justice agency may comply with laws, court orders, and official requests of other jurisdictions relating to expunction, correction, or confidential handling of criminal history records or information derived therefrom. This section does not confer any right to the expunction of any criminal history record, and any request for expunction of a criminal history record may be denied at the sole discretion of the court.

(4) EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any criminal history record of a minor or an adult which is ordered expunged by a court of competent jurisdiction pursuant to this section must be physically destroyed or obliterated by any criminal justice agency having custody of such record; except that any criminal history record in the custody of the department must be retained in all cases. A criminal history record ordered expunged that is retained by the department is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and not available to any person or entity except upon order of a court of competent jurisdiction. A criminal justice agency may retain a notation indicating compliance with an order to expunge.

(a) The person who is the subject of a criminal history record that is expunged under this section or under other provisions of law, including former s. 893.14, former s. 901.33, and former s. 943.058, may lawfully deny

or fail to acknowledge the arrests covered by the expunged record, except when the subject of the record:

1. Is a candidate for employment with a criminal justice agency;
2. Is a defendant in a criminal prosecution;
3. Concurrently or subsequently petitions for relief under this section or s. 943.059;
4. Is a candidate for admission to The Florida Bar;
5. Is seeking to be employed or licensed by or to contract with the Department of Children and Family Services or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the developmentally disabled, the aged, or the elderly as provided in s. 110.1127(3), s. 393.063(15), s. 394.4572(1), s. 397.451, s. 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), ~~s. 415.1075(4)~~, s. 985.407, or chapter 400; or
6. Is seeking to be employed or licensed by the Office of Teacher Education, Certification, Staff Development, and Professional Practices of the Department of Education, any district school board, or any local governmental entity that licenses child care facilities.

Section 116. Paragraph (e) of subsection (4) of section 985.05, Florida Statutes, is amended to read:

985.05 Court records.—

(4) A court record of proceedings under this part is not admissible in evidence in any other civil or criminal proceeding, except that:

(e) Records of proceedings under this part may be used to prove disqualification pursuant to ss. 110.1127, 393.0655, 394.457, 397.451, 402.305, 402.313, 409.175, 409.176, and 985.407, ~~and for proof in a chapter 120 proceeding pursuant to s. 415.1075.~~

Section 117. Sections 415.1065, 415.1075, 415.1085, and 415.109, Florida Statutes, are repealed.

Section 118. There is hereby appropriated from the Health Care Trust Fund to the Agency for Health Care Administration one full-time equivalent position and \$60,000 to implement the provisions of s. 400.980, Florida Statutes, relating to the regulation of health care services pools, as provided for in this act.

Section 119. Subsection (4) of section 20.41, Florida Statutes, is amended to read:

20.41 Department of Elderly Affairs.—There is created a Department of Elderly Affairs.

(4) The department shall administratively house the State Long-Term Care Ombudsman Council, created by s. 400.0067, and the local district

long-term care ombudsman councils, created by s. 400.0069 and shall, as required by s. 712 of the federal Older Americans Act of 1965, ensure that both the state and local district long-term care ombudsman councils operate in compliance with the Older Americans Act. The councils in performance of their duties shall not be subject to control, supervision, or direction by the department.

Section 120. Paragraph (h) of subsection (4) of section 395.3025, Florida Statutes, is amended to read:

395.3025 Patient and personnel records; copies; examination.—

(4) Patient records are confidential and must not be disclosed without the consent of the person to whom they pertain, but appropriate disclosure may be made without such consent to:

(h) The State Long-Term Care Ombudsman Council and the local district long-term care ombudsman councils, with respect to the records of a patient who has been admitted from a nursing home or long-term care facility, when the councils are conducting an investigation involving the patient as authorized under part II of chapter 400, upon presentation of identification as a council member by the person making the request. Disclosure under this paragraph shall only be made after a competent patient or the patient's representative has been advised that disclosure may be made and the patient has not objected.

Section 121. Paragraph (b) of subsection (3) of section 400.0063, Florida Statutes, is amended to read:

400.0063 Establishment of Office of State Long-Term Care Ombudsman; designation of ombudsman and legal advocate.—

(3)

(b) The duties of the legal advocate shall include, but not be limited to:

1. Assisting the ombudsman in carrying out the duties of the office with respect to the abuse, neglect, or violation of rights of residents of long-term care facilities.

2. Assisting the state and local district ombudsman councils in carrying out their responsibilities under this part.

3. Initiating and prosecuting legal and equitable actions to enforce the rights of long-term care facility residents as defined in this chapter.

4. Serving as legal counsel to the state and local district ombudsman councils, or individual members thereof, against whom any suit or other legal action is initiated in connection with the performance of the official duties of the councils or an individual member.

Section 122. Paragraph (f) of subsection (1) and subsections (2) and (3) of section 400.0065, Florida Statutes, are amended to read:

400.0065 State Long-Term Care Ombudsman; duties and responsibilities; conflict of interest.—

(1) The purpose of the Office of State Long-Term Care Ombudsman shall be to:

(f) Provide administrative and technical assistance to state and local district ombudsman councils.

(2) The State Long-Term Care Ombudsman shall have the duty and authority to:

(a) Assist and support the efforts of the State Long-Term Care Ombudsman Council in the establishment and coordination of local district ombudsman councils throughout the state.

(b) Perform the duties specified in state and federal law, rules, and regulations.

(c) Within the limits of federal and state funding authorized and appropriated, employ such personnel, including staff for local district ombudsman councils, as are necessary to perform adequately the functions of the office and provide or contract for legal services to assist the state and local district ombudsman councils in the performance of their duties. Staff positions for each local district ombudsman council may be established as career service positions, and shall be filled by the ombudsman after ~~in~~ consultation with the respective local district ombudsman council.

(d) Contract for services necessary to carry out the activities of the office.

(e) Apply for, receive, and accept grants, gifts, or other payments, including, but not limited to, real property, personal property, and services from a governmental entity or other public or private entity or person, and make arrangements for the use of such grants, gifts, or payments.

(f) Annually prepare a budget request that shall be submitted to the Governor by the department for transmittal to the Legislature.

~~(f) Perform the duties specified in state and federal law without interference by officials of the Department of Elderly Affairs, the Agency for Health Care Administration, or the Department of Children and Family Services. The ombudsman shall report to the Governor, the President of the Senate, and the Speaker of the House of Representatives whenever organizational or departmental policy issues threaten the ability of the Office of State Long-Term Care Ombudsman to carry out its duties under state or federal law.~~

(g) Coordinate, to the greatest extent possible, state and local district ombudsman services with the protection and advocacy systems for individuals with developmental disabilities and mental illnesses and with legal assistance programs for the poor through adoption of memoranda of understanding and other means.

(h) Enter into a cooperative agreement with the statewide and district human rights advocacy committees for the purpose of coordinating advocacy services provided to residents of long-term care facilities.

(i) Enter into a cooperative agreement with the Medicaid Fraud Division as prescribed under s. 731(e)(2)(B) of the Older Americans Act.

(3) The State Long-Term Care Ombudsman shall not:

(a) Have a direct involvement in the licensing or certification of, or an ownership or investment interest in, a long-term care facility or a provider of a long-term care service.

(b) Be employed by, or participate in the management of, a long-term care facility.

(c) Receive, or have a right to receive, directly or indirectly, remuneration, in cash or in kind, under a compensation agreement with the owner or operator of a long-term care facility.

The Department of Elderly Affairs, in consultation with ombudsman, shall adopt rules to establish procedures to identify and eliminate conflicts of interest as described in this subsection.

Section 123. Section 400.0066, Florida Statutes, is created to read:

400.0066 Office of State Long-Term Care Ombudsman and departments of state government.—

(1) The State Long-Term Care Ombudsman shall perform the duties specified in state and federal law.

(2) Officials from the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Children and Family Services shall not interfere in the performance of official duties of any ombudsman staff or volunteers.

(3) The Department of Elderly Affairs shall provide administrative support to the long-term care ombudsman program, including:

(a) Office space for state and local ombudsman councils.

(b) Assistance with personnel, accounting, and management information systems.

(4) The Department of Elderly Affairs shall meet the costs associated with these functions from funds appropriated to the department.

(5) The Department of Elderly Affairs shall include the costs associated with support of the long-term care ombudsman program in developing its budget requests for consideration by the Governor and submittal to the Legislature.

(6) The Department of Elderly Affairs may divert from the federal ombudsman appropriation an amount equal to the department's administrative cost ratio, not to exceed 10 percent of the federal appropriation, for the ombudsman. The remaining ninety percent or more of the allotment from

the Older Americans Act Program shall be expended on direct ombudsman activities.

Section 124. Section 400.0067, Florida Statutes, is amended to read:

400.0067 Establishment of State Long-Term Care Ombudsman Council; duties; membership.—

(1) There is created within the Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council.

(2) The State Long-Term Care Ombudsman Council shall:

(a) Assist the ombudsman in reaching a consensus among local district ombudsman councils on issues of statewide concern.

(b) Serve as an appellate body in receiving from the local district ombudsman councils complaints not resolved at the local district level. The state ombudsman council may enter any long-term care facility involved in an appeal, pursuant to the conditions specified in s. 400.0069(3).

(c) Assist the ombudsman to discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to develop procedures, in consultation with the Department of Elderly Affairs, relating to such investigations. Investigations may consist, in part, of one or more onsite administrative inspections.

(d) Assist the ombudsman in eliciting, receiving, responding to, and resolving complaints made by or on behalf of long-term care facility residents and in developing procedures, in consultation with the Department of Elderly Affairs, relating to the receipt and resolution of such complaints.

(e) Elicit and coordinate state, local, and voluntary organizational assistance for the purpose of improving the care received by residents of a long-term care facility.

(f) Be authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of its duties, including assistance from the adult protective services program of the Department of Children and Family Services.

~~(g) Enter into a cooperative agreement with the statewide and district human rights advocacy committees for the purpose of coordinating advocacy services provided to residents of long-term care facilities.~~

~~(g)~~^(h) Prepare an annual report describing the activities carried out by the ombudsman and the State Long-Term Care Ombudsman Council in the year for which the report is prepared. The State Long-Term Care Ombudsman Council shall submit the report to the Commissioner of the United States Administration on Aging, the Governor, the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the House and Senate, the chairpersons of appropriate House and Senate committees, the Secretaries of Elderly Affairs and Children and Family Services, and the Director of Health Care Administration. The report shall be

submitted at least 30 days before the convening of the regular session of the Legislature and shall, at a minimum:

1. Contain and analyze data collected concerning complaints about and conditions in long-term care facilities.

2. Evaluate the problems experienced by residents of long-term care facilities.

3. Contain recommendations for improving the quality of life of the residents and for protecting the health, safety, welfare, and rights of the residents.

4. Analyze the success of the ombudsman program during the preceding year and identify the barriers that prevent the optimal operation of the program. The report of the program's successes shall also address the relationship between the state long-term care ombudsman program, the Department of Elderly Affairs, the Agency for Health Care Administration, and the Department of Children and Family Services, and an assessment of how successfully the state long-term care ombudsman program has carried out its responsibilities under the Older Americans Act.

5. Provide policy and regulatory and legislative recommendations to solve identified problems; resolve residents' complaints; improve the quality of care and life of the residents; protect the health, safety, welfare, and rights of the residents; and remove the barriers to the optimal operation of the state long-term care ombudsman program.

6. Contain recommendations from the local district ombudsman councils regarding program functions and activities.

7. Include a report on the activities of the legal advocate and other legal advocates acting on behalf of the local district and state councils.

(3)(a) The State Long-Term Care Ombudsman Council shall be composed of: one active local council member designated by each local council and three persons appointed by the Governor. ~~a number of members equal to the number of district councils in the state plus three. Each district ombudsman council, including the ombudsman councils for subdistricts 3A and 3B, shall appoint one member and the Governor shall appoint three members to the State Long-Term Care Ombudsman Council. An individual designated by a district ombudsman council must have been a member of a district ombudsman council for at least 1 year, and shall continue to serve as an active member at the district level. The Governor's appointments shall be made from a list of not fewer than eight nominees, to be selected by the secretary in consultation with the State Long-Term Care Ombudsman Council and submitted to the Governor. If the appointments are not made within 30 days after the Governor receives the list of nominees, the secretary shall, in consultation with the State Long-Term Care Ombudsman Council, appoint three members from the list of nominees submitted to the Governor. At least one member appointed by the Governor must be over 60 years of age.~~

(b)1. The ombudsman, in consultation with the secretary and the state ombudsman council, shall submit a list of at least eight names to the Governor of persons not serving on a local council.

2. The Governor shall appoint three members from the list, at least one of whom must be over 60 years of age.

3. If the Governor's appointments are not made within 60 days after the ombudsman submits the list, the ombudsman, in consultation with the state ombudsman council, shall appoint three members, at least one of whom must be over 60 years of age.

(c)(b) All members shall be appointed to serve 3-year terms. A member of the state ombudsman council may not serve more than two consecutive terms. Any vacancy shall be filled in the same manner as the original appointment. The position of any member missing three consecutive regular meetings without cause shall be declared vacant. The findings of the ombudsman regarding cause shall be final and binding.

(d)(e) The state ombudsman council shall elect a chairperson for a term of 1 year from among the members who have served for at least 1 year. The chairperson shall select a vice chairperson from among the members. The vice chairperson shall preside over the council in the absence of the chairperson.

(e)(d) The state ombudsman council shall meet upon the call of the chairperson, at least quarterly or more frequently as needed.

(f)(e) Members shall receive no compensation but shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

~~(4) Members shall be appointed and serve 3-year terms as provided by this section.~~

~~(4)(5) No officer, employee, or representative of the Office of State Long-Term Care Ombudsman or of the State Long-Term Care Ombudsman Council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. The Department of Elderly Affairs, in consultation with the ombudsman, shall adopt rules to identify and remove conflicts of interest.~~

~~(5)(6) The Department of Elderly Affairs shall make a separate and distinct request for an appropriation for all expenses for the state and local district ombudsman councils.~~

Section 125. Section 400.0069, Florida Statutes, is amended to read:

400.0069 Local District long-term care ombudsman councils; duties; membership.—

(1) There shall be at least one long-term care ombudsman council in each of the planning and service areas of the Department of Elderly Affairs, which shall function under the direction of the ombudsman and the state ombudsman council.

(2) The duties of the local ~~district~~ ombudsman council are:

(a) To serve as a third-party mechanism for protecting the health, safety, welfare, and civil and human rights of residents of a long-term care facility.

(b) To discover, investigate, and determine the existence of abuse or neglect in any long-term care facility and to use the procedures provided for in ss. 415.101-415.113 when applicable. Investigations may consist, in part, of one or more onsite administrative inspections.

(c) To elicit, receive, investigate, respond to, and resolve complaints made by, or on behalf of, long-term care facility residents.

(d) To review and, if necessary, to comment on, for their effect on the rights of long-term care facility residents, all existing or proposed rules, regulations, and other governmental policies relating to long-term care facilities.

(e) To review personal property and money accounts of Medicaid residents pursuant to an investigation to obtain information regarding a specific complaint or problem.

(f) To represent the interests of residents before government agencies and to seek administrative, legal, and other remedies to protect the health, safety, welfare, and rights of the residents.

(g) To carry out other activities that the ombudsman determines to be appropriate.

(3) In order to carry out the duties specified in subsection (2), the local ~~district~~ ombudsman council is authorized, pursuant to ss. 400.19(1) and 400.434, to enter any long-term care facility without notice or first obtaining a warrant, subject to the provisions of s. 400.0073(5).

(4) Each local ~~district~~ ombudsman council shall be composed of no less than 15 members and no more than 30 members from the local planning and service area ~~district~~, to include the following: one medical or osteopathic physician whose practice includes or has included a substantial number of geriatric patients and who may have limited practice in a long-term care facility; one registered nurse who has geriatric experience, if possible; one licensed pharmacist; one registered dietitian; at least six nursing home residents or representative consumer advocates for nursing home residents; at least three residents of assisted living facilities or adult family-care homes or three representative consumer advocates for long-term care facility residents; one attorney; and one professional social worker. In no case shall the medical director of a long-term care facility or an employee of the Agency for Health Care Administration, the Department of Children and Family Services, or the Department of Elderly Affairs serve as a member or as an ex officio member of a council. Each member of the council shall certify that neither the council member nor any member of the council member's immediate family has any conflict of interest pursuant to subsection (10). Local District ombudsman councils are encouraged to recruit council members who are 60 years of age or older.

(5) All members shall be appointed to serve 3-year terms. Upon expiration of a term and in case of any other vacancy, the council shall select ~~appoint~~ a replacement by majority vote of the council, ~~subject to the approval of the Governor.~~ The ombudsman shall review the selection of the council and recommend approval or disapproval to the Governor. If no action is taken by the Governor to approve or disapprove the replacement of a member within 30 days after the ombudsman ~~council~~ has notified the Governor of his or her recommendation, ~~the appointment, the appointment of the replacement shall be considered disapproved and the process for selection of a replacement shall be repeated~~ approved. ~~The term of any member missing three consecutive regular meetings without cause shall be declared vacant.~~

(6) The local ~~district~~ ombudsman council shall elect a chair for a term of 1 year from members who have served at least 1 year. The chair shall select a vice chair from among the members of the council. The vice chair shall preside over the council in the absence of the chair.

(7) The local ~~district~~ ombudsman council shall meet upon the call of the chair or the ombudsman, at least once a month or more frequently as needed to handle emergency situations.

(8) A member of a local ~~district~~ ombudsman council shall receive no compensation but shall be reimbursed for travel expenses both within and outside the county of residence in accordance with the provisions of s. 112.061.

(9) The local ~~district~~ ombudsman councils are authorized to call upon appropriate agencies of state government for such professional assistance as may be needed in the discharge of their duties. All state agencies shall cooperate with the local ~~district~~ ombudsman councils in providing requested information and agency representatives at council meetings. ~~The Department of Children and Family Services shall continue to provide space and in-kind administrative support for each district ombudsman council staff within available resources until the Legislature appropriates funds for office space and administrative support.~~

(10) No officer, employee, or representative of a local ~~district~~ long-term care ombudsman council, nor any member of the immediate family of such officer, employee, or representative, may have a conflict of interest. ~~The Department of Elderly Affairs, in consultation with The ombudsman,~~ shall adopt rules to identify and remove conflicts of interest.

Section 126. Section 400.0071, Florida Statutes, is amended to read:

400.0071 Complaint procedures.—

(1) The state ombudsman council shall establish state and local ~~district~~ procedures for receiving complaints against a nursing home or long-term care facility or its employee.

(2) These procedures shall be posted in full view in every nursing home or long-term care facility. Every resident or representative of a resident

shall receive, upon admission to a nursing home or long-term care facility, a printed copy of the procedures of the state and the local ~~district~~ ombudsman councils.

Section 127. Subsections (1), (2), (3), and (4) of section 400.0073, Florida Statutes, are amended to read:

400.0073 State and local ~~district~~ ombudsman council investigations.—

(1) A local ~~district~~ ombudsman council shall investigate any complaint of a resident or representative of a resident based on an action by an administrator or employee of a nursing home or long-term care facility which might be:

- (a) Contrary to law.
- (b) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law.
- (c) Based on a mistake of fact.
- (d) Based on improper or irrelevant grounds.
- (e) Unaccompanied by an adequate statement of reasons.
- (f) Performed in an inefficient manner.
- (g) Otherwise erroneous.

(2) In an investigation, both the state and local ~~district~~ ombudsman councils have the authority to hold hearings.

(3) Subsequent to an appeal from a local ~~district~~ ombudsman council, the state ombudsman council may investigate any nursing home or long-term care facility.

(4) In addition to any specific investigation made pursuant to a complaint, the local ~~district~~ ombudsman council shall conduct, at least annually, an investigation, which shall consist, in part, of an onsite administrative inspection, of each nursing home or long-term care facility within its jurisdiction.

Section 128. Section 400.0075, Florida Statutes, is amended to read:

400.0075 Complaint resolution procedures.—

(1) Any complaint, including any problem identified by an ombudsman council as a result of an investigation, deemed valid and requiring remedial action by the local ~~district~~ ombudsman council shall be identified and brought to the attention of the long-term care facility administrator in writing. Upon receipt of such document, the administrator, in concurrence with the local ~~district~~ ombudsman council chair, shall establish target dates for taking appropriate remedial action. If, by the target date, the remedial action is not completed or forthcoming, the local ~~district~~ ombudsman council may:

- (a) Extend the target date if the council has reason to believe such action would facilitate the resolution of the complaint.
- (b) In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.
- (c) Refer the complaint to the state ombudsman council.

If the health, safety, welfare, or rights of the resident are in imminent danger, the local ~~district~~ long-term care ombudsman council may seek immediate legal or administrative remedies to protect the resident.

(2) Upon referral from the local ~~district~~ ombudsman council, the state ombudsman council shall assume the responsibility for the disposition of the complaint. If a long-term care facility fails to take action on a complaint found valid by the state ombudsman council, the state council may:

- (a) In accordance with s. 400.0077, publicize the complaint, the recommendations of the council, and the response of the long-term care facility.
- (b) Recommend to the agency a series of facility reviews pursuant to s. 400.19(4) to assure correction and nonrecurrence of conditions that give rise to complaints against a long-term care facility.
- (c) Recommend to the agency changes in rules for inspecting and licensing or certifying long-term care facilities, and recommend to the Agency for Health Care Administration changes in rules for licensing and regulating long-term care facilities.
- (d) Refer the complaint to the state attorney for prosecution if there is reason to believe the long-term care facility or its employee is guilty of a criminal act.
- (e) Recommend to the Agency for Health Care Administration that the long-term care facility no longer receive payments under the State Medical Assistance Program (Medicaid).
- (f) Recommend that the agency initiate procedures for revocation of license in accordance with chapter 120.
- (g) Seek legal, administrative, or other remedies to protect the health, safety, welfare, or rights of the resident.

If the health, safety, welfare, or rights of the resident are in imminent danger, the State Long-Term Care Ombudsman Council shall seek immediate legal or administrative remedies to protect the resident.

(3) The state ombudsman council shall provide, as part of its annual report required pursuant to s. 400.0067(2)(~~g~~)(h), information relating to the disposition of all complaints to the Department of Elderly Affairs.

Section 129. Paragraph (a) of subsection (1) and subsections (4) and (5) of section 400.0077, Florida Statutes, are amended to read:

400.0077 Confidentiality.—

(1) The following are confidential and exempt from the provisions of s. 119.07(1):

(a) Resident records held by the ombudsman or by the state or a local district ombudsman council.

(4) Members of any state or local district ombudsman council shall not be required to testify in any court with respect to matters held to be confidential under s. 400.414 except as may be necessary to enforce the provisions of this act.

(5) Subject to the provisions of this section, the Office of State Long-Term Care Ombudsman ~~Department of Elderly Affairs, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council,~~ shall adopt rules for the disclosure by the ombudsman or local district ombudsman councils of files maintained by the program.

Section 130. Subsection (2) of section 400.0079, Florida Statutes, is amended to read:

400.0079 Immunity.—

(2) The ombudsman or any person acting on behalf of the Office of State Long-Term Care Ombudsman or the state or a local district long-term care ombudsman council shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed, during the good faith performance of official duties.

Section 131. Subsections (1) and (2) of section 400.0081, Florida Statutes, are amended to read:

400.0081 Access.—

(1) The Office of State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, and the local district long-term care ombudsman councils, or their representatives, shall have access to:

- (a) Long-term care facilities and residents.
- (b) Medical and social records of a resident for review, if:

1. The office has the permission of the resident or the legal representative of the resident; or

2. The resident is unable to consent to the review and has no legal representative.

(c) Medical and social records of the resident as necessary to investigate a complaint, if:

- 1. A legal guardian of the resident refuses to give permission.

2. The office has reasonable cause to believe that the guardian is not acting in the best interests of the resident.

3. The representative obtains the approval of the ombudsman.

(d) The administrative records, policies, and documents to which the residents, or the general public, have access.

(e) Upon request, copies of all licensing and certification records maintained by the state with respect to a long-term care facility.

(2) Notwithstanding paragraph (1)(b), if, pursuant to a complaint investigation by the state ombudsman council or a local district ombudsman council, the legal representative of the resident refuses to give permission for the release of the resident's records, and if the Office of the State Long-Term Care Ombudsman Council has reasonable cause to find that the legal representative is not acting in the best interests of the resident, the medical and social records of the resident must be made available to the state or local district council as is necessary for the members of the council to investigate the complaint.

Section 132. Subsections (1) and (2) of section 400.0083, Florida Statutes, are amended to read:

400.0083 Interference; retaliation; penalties.—

(1) It shall be unlawful for any person, long-term care facility, or other entity to willfully interfere with a representative of the Office of the State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, or a local district long-term care ombudsman council in the performance of official duties.

(2) It shall be unlawful for any person, long-term care facility, or other entity to retaliate against any resident, employee, or other person for filing a complaint with, providing information to, or otherwise cooperating with any representative of the Office of the State Long-Term Care Ombudsman, the State Long-Term Care Ombudsman Council, or a local district long-term care ombudsman council.

Section 133. Section 400.0087, Florida Statutes, is amended to read:

400.0087 Agency oversight.—

(1) The Department of Elderly Affairs shall monitor the local district ombudsman councils responsible for carrying out the duties delegated by s. 400.0069 and federal law. The department, in consultation with the ombudsman and the State Long-Term Care Ombudsman Council, shall adopt rules to establish the policies and procedures for the monitoring of local district ombudsman councils.

(2) The department is responsible for ensuring that the Office of State Long-Term Care Ombudsman prepares its annual report; provides information to public and private agencies, legislators, and others; provides appropriate training to representatives of the office or of the state or local district

long-term care ombudsman councils; and coordinates ombudsman services with the Advocacy Center for Persons with Disabilities and with providers of legal services to residents of long-term care facilities in compliance with state and federal laws.

(3) The Department of Elderly Affairs is the designated state unit on aging for purposes of complying with the federal Older Americans Act. The Department of Elderly Affairs shall ensure that the ombudsman program has the objectivity and independence required to qualify it for funding under the federal Older Americans Act, and shall carry out the long-term care ombudsman program through the Office of the State Long-Term Care Ombudsman Council. The Department of Elderly Affairs shall also:

(a) Receive and disburse state and federal funds for purposes that the state ombudsman council has formulated in accordance with the Older Americans Act.

(b) Act as liaison between the federal program representatives, the staffs of the state and local ~~district~~ ombudsman councils, and members of the state and local ~~district~~ ombudsman councils.

Section 134. Section 400.0089, Florida Statutes, is amended to read:

400.0089 Agency reports.—The State Long-Term Care Ombudsman Council, shall, in cooperation with the Department of Elderly Affairs, maintain a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities and to residents, for the purpose of identifying and resolving significant problems. The council shall submit such data as part of its annual report required pursuant to s. 400.0067(2)(g)(~~h~~) to the Agency for Health Care Administration, the Department of Children and Family Services, the Statewide Human Rights Advocacy Committee, the Advocacy Center for Persons with Disabilities, the Commissioner for the United States Administration on Aging, the National Ombudsman Resource Center, and any other state or federal entities that the ombudsman determines appropriate.

Section 135. Section 400.0091, Florida Statutes, is amended to read:

400.0091 Training.—The ombudsman shall provide appropriate training to all employees of the Office of State Long-Term Care Ombudsman and to the state and local ~~district~~ long-term care ombudsman councils, including all unpaid volunteers. The ombudsman shall implement the training program no later than June 1, 1994. No employee, officer, or representative of the office or of the state or local ~~district~~ long-term care ombudsman councils, other than the ombudsman, may carry out any authorized ombudsman duty or responsibility unless the person has received the training required by this section and has been approved by the ombudsman as qualified to carry out ombudsman activities on behalf of the office or the state or local ~~district~~ long-term care ombudsman councils.

Section 136. Present subsections (8), (9), and (10) of section 400.021, Florida Statutes, are renumbered as subsections (7), (8), and (9), respec-

tively, and present subsection (7) is renumbered as subsection (10) and amended to read:

400.021 Definitions.—When used in this part, unless the context otherwise requires, the term:

(10)(7) “~~Local District~~ ombudsman council” means a local district long-term care ombudsman council established pursuant to s. 400.0069, located within the Older Americans Act planning and service areas.

Section 137. Paragraph (c) of subsection (1) and subsections (2) and (3) of section 400.022, Florida Statutes, are amended to read:

400.022 Residents’ rights.—

(1) All licensees of nursing home facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident the following:

(c) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident:

1. Any representative of the federal or state government, including, but not limited to, representatives of the Department of Children and Family Services, the Department of Health, the Agency for Health Care Administration, the Office of the Attorney General, and the Department of Elderly Affairs; any law enforcement officer; members of the state or local district ombudsman council; and the resident’s individual physician.

2. Subject to the resident’s right to deny or withdraw consent, immediate family or other relatives of the resident.

The facility must allow representatives of the State Long-Term Care Ombudsman Council to examine a resident’s clinical records with the permission of the resident or the resident’s legal representative and consistent with state law.

(2) The licensee for each nursing home shall orally inform the resident of the resident’s rights and provide a copy of the statement required by subsection (1) to each resident or the resident’s legal representative at or before the resident’s admission to a facility. The licensee shall provide a copy of the resident’s rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the agency or local district ombudsman council. The statement must be in bold-faced type and shall include the name, address, and telephone numbers of

the local ~~district~~ ombudsman council and adult abuse registry where complaints may be lodged.

(3) Any violation of the resident's rights set forth in this section shall constitute grounds for action by the agency under the provisions of s. 400.102. In order to determine whether the licensee is adequately protecting residents' rights, the annual inspection of the facility shall include private informal conversations with a sample of residents to discuss residents' experiences within the facility with respect to rights specified in this section and general compliance with standards, and consultation with the ombudsman council in the local ~~district~~ in which the nursing home is located.

Section 138. Subsections (8), (9), (11), (12), (13), and (14) of section 400.0255, Florida Statutes, are amended to read:

400.0255 Resident transfer or discharge; requirements and procedures; hearings.—

(8) The notice required by subsection (7) must be in writing and must contain all information required by state and federal law, rules, or regulations applicable to Medicaid or Medicare cases. The agency shall develop a standard document to be used by all facilities licensed under this part for purposes of notifying residents of a discharge or transfer. Such document must include a means for a resident to request the local ~~district~~ long-term care ombudsman council to review the notice and request information about or assistance with initiating a fair hearing with the department's Office of Appeals Hearings. In addition to any other pertinent information included, the form shall specify the reason allowed under federal or state law that the resident is being discharged or transferred, with an explanation to support this action. Further, the form shall state the effective date of the discharge or transfer and the location to which the resident is being discharged or transferred. The form shall clearly describe the resident's appeal rights and the procedures for filing an appeal, including the right to request the local ~~district~~ ombudsman council to review the notice of discharge or transfer. A copy of the notice must be placed in the resident's clinical record, and a copy must be transmitted to the resident's legal guardian or representative and to the local ~~district~~ ombudsman council.

(9) A resident may request that the local ~~district~~ ombudsman council review any notice of discharge or transfer given to the resident. When requested by a resident to review a notice of discharge or transfer, the local ~~district~~ ombudsman council shall do so within 7 days after receipt of the request. The nursing home administrator, or the administrator's designee, must forward the request for review contained in the notice to the local ~~district~~ ombudsman council within 24 hours after such request is submitted. Failure to forward the request within 24 hours after the request is submitted shall toll the running of the 30-day advance notice period until the request has been forwarded.

(11) Notwithstanding paragraph (10)(b), an emergency discharge or transfer may be implemented as necessary pursuant to state or federal law during the period of time after the notice is given and before the time a hearing decision is rendered. Notice of an emergency discharge or transfer

to the resident, the resident's legal guardian or representative, and the local district ombudsman council if requested pursuant to subsection (9) must be by telephone or in person. This notice shall be given before the transfer, if possible, or as soon thereafter as practicable. A local district ombudsman council conducting a review under this subsection shall do so within 24 hours after receipt of the request. The resident's file must be documented to show who was contacted, whether the contact was by telephone or in person, and the date and time of the contact. If the notice is not given in writing, written notice meeting the requirements of subsection (8) must be given the next working day.

(12) After receipt of any notice required under this section, the local district ombudsman council may request a private informal conversation with a resident to whom the notice is directed, and, if known, a family member or the resident's legal guardian or designee, to ensure that the facility is proceeding with the discharge or transfer in accordance with the requirements of this section. If requested, the local district ombudsman council shall assist the resident with filing an appeal of the proposed discharge or transfer.

(13) The following persons must be present at all hearings authorized under this section:

- (a) The resident, or the resident's legal representative or designee.
- (b) The facility administrator, or the facility's legal representative or designee.

A representative of the local district long-term care ombudsman council may be present at all hearings authorized by this section.

(14) In any hearing under this section, the following information concerning the parties shall be confidential and exempt from the provisions of s. 119.07(1):

- (a) Names and addresses.
- (b) Medical services provided.
- (c) Social and economic conditions or circumstances.
- (d) Evaluation of personal information.
- (e) Medical data, including diagnosis and past history of disease or disability.
- (f) Any information received verifying income eligibility and amount of medical assistance payments. Income information received from the Social Security Administration or the Internal Revenue Service must be safeguarded according to the requirements of the agency that furnished the data.

The exemption created by this subsection does not prohibit access to such information by a local ~~district~~ long-term care ombudsman council upon request, by a reviewing court if such information is required to be part of the record upon subsequent review, or as specified in s. 24(a), Art. I of the State Constitution.

Section 139. Subsection (1) of section 400.19, Florida Statutes, is amended to read:

400.19 Right of entry and inspection.—

(1) The agency and any duly designated officer or employee thereof or a member of the State Long-Term Care Ombudsman Council or the local ~~district~~ long-term care ombudsman council shall have the right to enter upon and into the premises of any facility licensed pursuant to this part, or any distinct nursing home unit of a hospital licensed under chapter 395 or any freestanding facility licensed under chapter 395 that provides extended care or other long-term care services, at any reasonable time in order to determine the state of compliance with the provisions of this part and rules in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the agency has reason to believe is being operated or maintained as a facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing same. Any application for a facility license or renewal thereof, made pursuant to this part, shall constitute permission for and complete acquiescence in any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. The agency shall, within 60 days after receipt of a complaint made by a resident or resident's representative, complete its investigation and provide to the complainant its findings and resolution.

Section 140. Subsection (1) of section 400.191, Florida Statutes, is amended to read:

400.191 Availability, distribution, and posting of reports and records.—

(1) The agency shall provide information to the public about all of the licensed nursing home facilities operating in the state. The agency shall, within 60 days after an annual inspection visit or within 30 days after any interim visit to a facility, send copies of the inspection reports to the local ~~district~~ long-term care ombudsman council, the agency's local office, and a public library or the county seat for the county in which the facility is located.

Section 141. Subsection (6) and paragraph (c) of subsection (7) of section 400.23, Florida Statutes, are amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(6) Prior to conducting a survey of the facility, the survey team shall obtain a copy of the local ~~district~~ long-term care ombudsman council report

on the facility. Problems noted in the report shall be incorporated into and followed up through the agency's inspection process. This procedure does not preclude the ~~local district nursing home and long-term care facility~~ ombudsman council from requesting the agency to conduct a followup visit to the facility.

(7) The agency shall, at least every 15 months, evaluate all nursing home facilities and make a determination as to the degree of compliance by each licensee with the established rules adopted under this part as a basis for assigning a licensure status to that facility. The agency shall base its evaluation on the most recent inspection report, taking into consideration findings from other official reports, surveys, interviews, investigations, and inspections. The agency shall assign a licensure status of standard or conditional to each nursing home.

(c) In evaluating the overall quality of care and services and determining whether the facility will receive a conditional or standard license, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, ombudsman council members in the planning and service area district in which the facility is located, guardians of residents, and staff of the nursing home facility.

Section 142. Subsection (13) of section 400.419, Florida Statutes, is amended to read:

400.419 Violations; administrative fines.—

(13) The agency shall develop and disseminate an annual list of all facilities sanctioned or fined \$5,000 or more for violations of state standards, the number and class of violations involved, the penalties imposed, and the current status of cases. The list shall be disseminated, at no charge, to the Department of Elderly Affairs, the Department of Health, the Department of Children and Family Services, the area agencies on aging, the Statewide Human Rights Advocacy Committee, and the state and local district nursing home ombudsman councils. The Department of Children and Family Services shall disseminate the list to service providers under contract to the department who are responsible for referring persons to a facility for residency. The agency may charge a fee commensurate with the cost of printing and postage to other interested parties requesting a copy of this list.

Section 143. Subsection (2) of section 400.428, Florida Statutes, is amended to read:

400.428 Resident bill of rights.—

(2) The administrator of a facility shall ensure that a written notice of the rights, obligations, and prohibitions set forth in this part is posted in a prominent place in each facility and read or explained to residents who cannot read. This notice shall include the name, address, and telephone numbers of the local district ombudsman council and adult abuse registry and, when applicable, the Advocacy Center for Persons with Disabilities, Inc., and the district human rights advocacy committee, where complaints

may be lodged. The facility must ensure a resident's access to a telephone to call the local ~~district~~ ombudsman council, adult abuse registry, Advocacy Center for Persons with Disabilities, Inc., and district human rights advocacy committee.

Section 144. Section 400.434, Florida Statutes, is amended to read:

400.434 Right of entry and inspection.—Any duly designated officer or employee of the department, the Department of Children and Family Services, the agency, the state or local fire marshal, or a member of the state or local ~~district~~ long-term care ombudsman council shall have the right to enter unannounced upon and into the premises of any facility licensed pursuant to this part in order to determine the state of compliance with the provisions of this part and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the agency has reason to believe is being operated or maintained as a facility without a license; but no such entry or inspection of any premises may be made without the permission of the owner or person in charge thereof, unless a warrant is first obtained from the circuit court authorizing such entry. The warrant requirement shall extend only to a facility which the agency has reason to believe is being operated or maintained as a facility without a license. Any application for a license or renewal thereof made pursuant to this part shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought, in order to facilitate verification of the information submitted on or in connection with the application; to discover, investigate, and determine the existence of abuse or neglect; or to elicit, receive, respond to, and resolve complaints. Any current valid license shall constitute unconditional permission for, and complete acquiescence in, any entry or inspection of the premises by authorized personnel. The agency shall retain the right of entry and inspection of facilities that have had a license revoked or suspended within the previous 24 months, to ensure that the facility is not operating unlawfully. However, before entering the facility, a statement of probable cause must be filed with the director of the agency, who must approve or disapprove the action within 48 hours. Probable cause shall include, but is not limited to, evidence that the facility holds itself out to the public as a provider of personal care services or the receipt of a complaint by the long-term care ombudsman council about the facility.

Section 145. Subsection (2) of section 400.435, Florida Statutes, is amended to read:

400.435 Maintenance of records; reports.—

(2) Within 60 days after the date of the biennial inspection visit or within 30 days after the date of any interim visit, the agency shall forward the results of the inspection to the local ~~district~~ ombudsman council in whose planning and service area, as defined in part II, the facility is located; to at least one public library or, in the absence of a public library, the county seat in the county in which the inspected assisted living facility is located; and, when appropriate, to the district adult services and district alcohol, drug abuse, and mental health program offices.

Section 146. Paragraph (i) of subsection (1) and subsection (5) of section 400.4415, Florida Statutes, are amended to read:

400.4415 Assisted living facilities advisory committee.—

(1) There is created the assisted living facilities advisory committee, which shall assist the agency in developing and implementing a pilot rating system for facilities. The committee shall consist of nine members who are to be appointed by, and report directly to, the director of the agency. The membership is to include:

(i) One consumer representative from a local ~~district~~ long-term care ombudsman council.

(5) In determining the rating and evaluating the overall quality of care and services, the agency shall consider the needs and limitations of residents in the facility and the results of interviews and surveys of a representative sampling of residents, families of residents, long-term care ombudsman council members in the planning and service area ~~district~~ in which the facility is located, guardians of residents, and staff of the facility.

Section 147. Subsection (7) of section 400.619, Florida Statutes, is amended to read:

400.619 Licensure application and renewal.—

(7) Access to a licensed adult family-care home must be provided at reasonable times for the appropriate officials of the department, the Department of Health, the Department of Children and Family Services, the agency, and the State Fire Marshal, who are responsible for the development and maintenance of fire, health, sanitary, and safety standards, to inspect the facility to assure compliance with these standards. In addition, access to a licensed adult family-care home must be provided at reasonable times for the local ~~district~~ long-term care ombudsman council.

Section 148. Subsection (2) of section 400.62, Florida Statutes, is amended to read:

400.628 Residents' bill of rights.—

(2) The provider shall ensure that residents and their legal representatives are made aware of the rights, obligations, and prohibitions set forth in this part. Residents must also be given the names, addresses, and telephone numbers of the local ~~district~~ ombudsman council and the adult abuse registry where they may lodge complaints.

Section 149. There is hereby appropriated from the General Revenue Fund to the long-term care ombudsman program within the Department of Elderly Affairs the sum of \$40,000 in nonrecurring funds to be used for training members of the state and local long-term care ombudsman councils.

Section 150. There is hereby appropriated from the General Revenue Fund to the long-term care ombudsman program within the Department of Elderly Affairs the sum of \$40,000 in nonrecurring funds to be used for

materials to educate residents of long-term care facilities and their families and visitors, facility staff, and the general public about the ombudsman program and to encourage such persons to seek assistance from the long-term care ombudsman program.

Section 151. Section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical or mental examination of parent or person requesting custody of child.—

(1) When any child is removed from the home and maintained in an out-of-home placement, the department is authorized to have a medical screening performed on the child without authorization from the court and without consent from a parent or legal custodian. Such medical screening shall be performed by a licensed health care professional and shall be to examine the child for injury, illness, and communicable diseases and to determine the need for immunization. The department shall by rule establish the invasiveness of the medical procedures authorized to be performed under this subsection. In no case does this subsection authorize the department to consent to medical treatment for such children.

(2) When the department has performed the medical screening authorized by subsection (1), or when it is otherwise determined by a licensed health care professional that a child who is in an out-of-home placement, but who has not been committed to the department, is in need of medical treatment, including the need for immunization, consent for medical treatment shall be obtained in the following manner:

(a)1. Consent to medical treatment shall be obtained from a parent or legal custodian of the child; or

2. A court order for such treatment shall be obtained.

(b) If a parent or legal custodian of the child is unavailable and his or her whereabouts cannot be reasonably ascertained, and it is after normal working hours so that a court order cannot reasonably be obtained, an authorized agent of the department shall have the authority to consent to necessary medical treatment, including immunization, for the child. The authority of the department to consent to medical treatment in this circumstance shall be limited to the time reasonably necessary to obtain court authorization.

(c) If a parent or legal custodian of the child is available but refuses to consent to the necessary treatment, including immunization, a court order shall be required unless the situation meets the definition of an emergency in s. 743.064 or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent, caregiver, or legal custodian. In such case, the department shall have the authority to consent to necessary medical treatment. This authority is limited to the time reasonably necessary to obtain court authorization.

In no case shall the department consent to sterilization, abortion, or termination of life support.

(3)(a) A judge may order a child in an out-of-home placement to be examined by a licensed health care professional.

(b) The judge may also order such child to be evaluated by a psychiatrist or a psychologist, ~~by a district school board educational needs assessment team,~~ or, if a developmental disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the department. If it is necessary to place a child in a residential facility for such evaluation, ~~then~~ the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.

(c) The judge may also order such child to be evaluated by a district school board educational needs assessment team. The educational needs assessment provided by the district school board educational needs assessment team shall include, but not be limited to, reports of intelligence and achievement tests, screening for learning disabilities and other handicaps, and screening for the need for alternative education as defined in s. 230.23.

(4) A judge may order a child in an out-of-home placement to be treated by a licensed health care professional based on evidence that the child should receive treatment. The judge may also order such child to receive mental health or developmental disabilities ~~retardation~~ services from a psychiatrist, psychologist, or other appropriate service provider. Except as provided in subsection (5), if it is necessary to place the child in a residential facility for such services, ~~then~~ the procedures and criteria established in s. 394.467 or chapter 393 shall be used, whichever is applicable. A child may be provided developmental disabilities or mental health or ~~retardation~~ services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1) or chapter 393, whichever is applicable.

(5) Children who are in the legal custody of the department may be placed by the department in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to this section or may be placed by the court in accordance with an order of involuntary examination or involuntary placement entered pursuant to s. 394.463 or s. 394.467. All children placed in a residential treatment program under this subsection must have a guardian ad litem appointed.

(a) As used in this subsection, the term:

1. “Residential treatment” means placement for observation, diagnosis, or treatment of an emotional disturbance in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395.

2. “Least-restrictive alternative” means the treatment and conditions of treatment that, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the child or adolescent or others from physical injury.

3. “Suitable for residential treatment” or “suitability” means a determination concerning a child or adolescent with an emotional disturbance as

defined in s. 394.492(5) or a serious emotional disturbance as defined in s. 394.492(6) that each of the following criteria is met:

- a. The child requires residential treatment.
- b. The child is in need of a residential treatment program and is expected to benefit from mental health treatment.
- c. An appropriate, less restrictive alternative to residential treatment is unavailable.

(b) Whenever the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted by a qualified evaluator who is appointed by the Agency for Health Care Administration. This suitability assessment must be completed before the placement of the child in a residential treatment center for emotionally disturbed children and adolescents or a hospital. The qualified evaluator must be a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

(c) Before a child is admitted under this subsection, the child shall be assessed for suitability for residential treatment by a qualified evaluator who has conducted a personal examination and assessment of the child and has made written findings that:

1. The child appears to have an emotional disturbance serious enough to require residential treatment and is reasonably likely to benefit from the treatment.
2. The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.
3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable.

A copy of the written findings of the evaluation and suitability assessment must be provided to the department and to the guardian ad litem, who shall have the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem and the court having jurisdiction over the child and must provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator.

(e)1. Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the

department and to the guardian ad litem, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and participate, and the guardian ad litem and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, and to the department.

(f) Within 30 days after admission, the residential treatment program must review the appropriateness and suitability of the child's placement in the program. The residential treatment program must determine whether the child is receiving benefit towards the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem and to the department. The department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child's treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The department may not reimburse a facility until the facility has submitted every written report that is due.

(g)1. The department must submit, at the beginning of each month, to the court having jurisdiction over the child a written report regarding the child's progress towards achieving the goals specified in the individualized plan of treatment.

2. The court must conduct a hearing to review the status of the child's residential treatment plan no later than 3 months after the child's admission to the residential treatment program. An independent review of the child's progress towards achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 3-month review.

3. For any child in residential treatment at the time a judicial review is held pursuant to s. 39.701, the child's continued placement in residential treatment must be a subject of the judicial review.

4. If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet his or her needs.

(h) After the initial 3-month review, the court must conduct a review of the child's residential treatment plan every 90 days.

(i) The department must adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 3-month independent review by the qualified evaluators of the child's progress towards achiev-

ing the goals and objectives of the treatment plan which review must be submitted to the court. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under this section, and a reasonable, cost-efficient fee schedule for qualified evaluators.

(6)(5) When a child is in an out-of-home placement, a licensed health care professional shall be immediately called if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care.

(7)(6) Except as otherwise provided herein, nothing in this section shall be deemed to eliminate the right of a parent, legal custodian, or the child to consent to examination or treatment for the child.

(8)(7) Except as otherwise provided herein, nothing in this section shall be deemed to alter the provisions of s. 743.064.

(9)(8) A court shall not be precluded from ordering services or treatment to be provided to the child by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a church or religious organization, when required by the child's health and when requested by the child.

(10)(9) Nothing in this section shall be construed to authorize the permanent sterilization of the child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child.

(11)(10) For the purpose of obtaining an evaluation or examination, or receiving treatment as authorized pursuant to this section, no child alleged to be or found to be dependent shall be placed in a detention home or other program used primarily for the care and custody of children alleged or found to have committed delinquent acts.

(12)(11) The parents or legal custodian of a child in an out-of-home placement remain financially responsible for the cost of medical treatment provided to the child even if either one or both of the parents or if the legal custodian did not consent to the medical treatment. After a hearing, the court may order the parents or legal custodian, if found able to do so, to reimburse the department or other provider of medical services for treatment provided.

(13)(12) Nothing in this section alters the authority of the department to consent to medical treatment for a dependent child when the child has been committed to the department and the department has become the legal custodian of the child.

(14)(13) At any time after the filing of a shelter petition or petition for dependency, when the mental or physical condition, including the blood group, of a parent, caregiver, legal custodian, or other person requesting custody of a child is in controversy, the court may order the person to submit to a physical or mental examination by a qualified professional. The order

may be made only upon good cause shown and pursuant to notice and procedures as set forth by the Florida Rules of Juvenile Procedure.

Section 152. Section 394.4785, Florida Statutes, is amended to read:

394.4785 Children and adolescents ~~Minors~~; admission and placement in mental facilities.—

(1) A child or adolescent as defined in s. 394.492 may not be admitted to a state-owned or state-operated mental health treatment facility. A child may be admitted pursuant to s. 394.4625 or s. 394.467 to a crisis stabilization unit or a residential treatment center licensed under chapter 394 or a hospital licensed under chapter 395. The treatment center, unit, or hospital must provide the least-restrictive available treatment that is appropriate to the individual needs of the child or adolescent and must adhere to the guiding principles, system of care, and service planning provisions contained in part III of chapter 394.

~~(a) A minor who is admitted to a state mental hospital and placed in the general population or in a specialized unit for children or adolescents shall reside in living quarters separate from adult patients, and a minor who has not attained the age of 14 shall reside in living quarters separate from minors who are 14 years of age or older.~~

~~(2)(b) A person minor under the age of 14 who is admitted to any hospital licensed pursuant to chapter 395 may shall not be admitted to a bed in a room or ward with an adult patient in a mental health unit or share common areas with an adult patient in a mental health unit. However, a person minor 14 years of age or older may be admitted to a bed in a room or ward in the mental health unit with an adult if the admitting physician documents in the case record that such placement is medically indicated or for reasons of safety. Such placement shall be reviewed by the attending physician or a designee or on-call physician each day and documented in the case record.~~

~~(2) In all cases involving the admission of minors to a state mental hospital, the case record shall document that a good faith effort was made to place the minor in a less restrictive form of treatment. Admission to a state mental hospital shall be regarded as the last and only treatment option available. Notwithstanding the provision of paragraph (1)(a), an individual under the age of 18 may be housed in the general population if the hospital multidisciplinary treatment and rehabilitation team has reviewed the patient and has documented in the case record that such placement is necessary for reasons of safety. Such patients placed in the general population must be reviewed by this team every 30 days and recertified as appropriate for placement in the general population.~~

Section 153. Present subsections (18), (19), and (20) of section 394.67, Florida Statutes, are redesignated as subsections (19), (20), and (21), respectively, and a new subsection (18) is added to that section to read:

394.67 Definitions.—As used in this part, the term:

(18) "Residential treatment center for children and adolescents" means a 24-hour residential program, including a therapeutic group home, which provides mental health services to emotionally disturbed children or adolescents as defined in s. 394.492(5) or (6) and which is a private for-profit or not-for-profit corporation under contract with the department which offers a variety of treatment modalities in a more restrictive setting.

Section 154. Section 394.875, Florida Statutes, is amended to read:

394.875 Crisis stabilization units, and residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required; penalties.—

(1)(a) The purpose of a crisis stabilization unit is to stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under s. 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay and shall be limited in size to a maximum of 30 beds.

(b) The purpose of a residential treatment facility is to be a part of a comprehensive treatment program for mentally ill individuals in a community-based residential setting.

(c) The purpose of a residential treatment center for children and adolescents is to provide mental health assessment and treatment services pursuant to ss. 394.491, 394.495, and 394.496 to children and adolescents who meet the target population criteria specified in s. 394.493(1)(a), (b), or (c).

(2) It is unlawful for any entity to hold itself out as a crisis stabilization unit, ~~or a residential treatment facility, or a residential treatment center for children and adolescents,~~ or to act as a crisis stabilization unit, ~~or a residential treatment facility, or a residential treatment center for children and adolescents,~~ unless it is licensed by the agency pursuant to this chapter.

(3) Any person who violates subsection (2) is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(4) The agency may maintain an action in circuit court to enjoin the unlawful operation of a crisis stabilization unit, ~~or a residential treatment facility, or a residential treatment center for children and adolescents~~ if the agency first gives the violator 14 days' notice of its intention to maintain such action and if the violator fails to apply for licensure within such 14-day period.

(5) Subsection (2) does not apply to:

(a) Homes for special services licensed under chapter 400; or

(b) Nursing homes licensed under chapter 400; ~~or~~

(c) Comprehensive transitional education programs Residential child caring facilities licensed under s. 393.067 s. 409.175.

(6) The department, in consultation with the agency, may establish multiple license classifications for residential treatment facilities.

(7) The agency may not issue a license to a crisis stabilization unit unless the unit receives state mental health funds and is affiliated with a designated public receiving facility.

(8) The agency may issue a license for a crisis stabilization unit or short-term residential treatment facility, certifying the number of authorized beds for such facility as indicated by existing need and available appropriations. The agency may disapprove an application for such a license if it determines that a facility should not be licensed pursuant to the provisions of this chapter. Any facility operating beds in excess of those authorized by the agency shall, upon demand of the agency, reduce the number of beds to the authorized number, forfeit its license, or provide evidence of a license issued pursuant to chapter 395 for the excess beds.

(9) A children's crisis stabilization unit which does not exceed 20 licensed beds and which provides separate facilities or a distinct part of a facility, separate staffing, and treatment exclusively for minors may be located on the same premises as a crisis stabilization unit serving adults. The department, in consultation with the agency, shall adopt rules governing facility construction, staffing and licensure requirements, and the operation of such units for minors.

(10) The department, in consultation with the agency, must adopt rules governing a residential treatment center for children and adolescents which specify licensure standards for: admission; length of stay; program and staffing; discharge and discharge planning; treatment planning; seclusion, restraints, and time-out; rights of patients under s. 394.459; use of psychotropic medications; and standards for the operation of such centers.

~~(11)~~(10) Notwithstanding the provisions of subsection (8), crisis stabilization units may not exceed their licensed capacity by more than 10 percent, nor may they exceed their licensed capacity for more than 3 consecutive working days or for more than 7 days in 1 month.

~~(12)~~(11) Notwithstanding the other provisions of this section, any facility licensed under chapters 396 and 397 for detoxification, residential level I care, and outpatient treatment may elect to license concurrently all of the beds at such facility both for that purpose and as a long-term residential treatment facility pursuant to this section, if all of the following conditions are met:

(a) The licensure application is received by the department prior to January 1, 1993.

(b) On January 1, 1993, the facility was licensed under chapters 396 and 397 as a facility for detoxification, residential level I care, and outpatient treatment of substance abuse.

(c) The facility restricted its practice to the treatment of law enforcement personnel for a period of at least 12 months beginning after January 1, 1992.

(d) The number of beds to be licensed under chapter 394 is equal to or less than the number of beds licensed under chapters 396 and 397 as of January 1, 1993.

(e) The licensee agrees in writing to a condition placed upon the license that the facility will limit its treatment exclusively to law enforcement personnel and their immediate families who are seeking admission on a voluntary basis and who are exhibiting symptoms of posttraumatic stress disorder or other mental health problems, including drug or alcohol abuse, which are directly related to law enforcement work and which are amenable to verbal treatment therapies; the licensee agrees to coordinate the provision of appropriate postresidential care for discharged individuals; and the licensee further agrees in writing that a failure to meet any condition specified in this paragraph shall constitute grounds for a revocation of the facility's license as a residential treatment facility.

(f) The licensee agrees that the facility will meet all licensure requirements for a residential treatment facility, including minimum standards for compliance with lifesafety requirements, except those licensure requirements which are in express conflict with the conditions and other provisions specified in this subsection.

(g) The licensee agrees that the conditions stated in this subsection must be agreed to in writing by any person acquiring the facility by any means.

Any facility licensed under this subsection is not required to provide any services to any persons except those included in the specified conditions of licensure, and is exempt from any requirements related to the 60-day or greater average length of stay imposed on community-based residential treatment facilities otherwise licensed under this chapter.

~~(13)~~(12) Each applicant for licensure must comply with the following requirements:

(a) Upon receipt of a completed, signed, and dated application, the agency shall require background screening, in accordance with the level 2 standards for screening set forth in chapter 435, of the managing employee and financial officer, or other similarly titled individual who is responsible for the financial operation of the facility, including billings for client care and services. The applicant must comply with the procedures for level 2 background screening as set forth in chapter 435, as well as the requirements of s. 435.03(3).

(b) The agency may require background screening of any other individual who is an applicant if the agency has probable cause to believe that he or she has been convicted of a crime or has committed any other offense prohibited under the level 2 standards for screening set forth in chapter 435.

(c) Proof of compliance with the level 2 background screening requirements of chapter 435 which has been submitted within the previous 5 years

in compliance with any other health care licensure requirements of this state is acceptable in fulfillment of the requirements of paragraph (a).

(d) A provisional license may be granted to an applicant when each individual required by this section to undergo background screening has met the standards for the abuse registry background check and the Department of Law Enforcement background check, but the agency has not yet received background screening results from the Federal Bureau of Investigation, or a request for a disqualification exemption has been submitted to the agency as set forth in chapter 435, but a response has not yet been issued. A standard license may be granted to the applicant upon the agency's receipt of a report of the results of the Federal Bureau of Investigation background screening for each individual required by this section to undergo background screening which confirms that all standards have been met, or upon the granting of a disqualification exemption by the agency as set forth in chapter 435. Any other person who is required to undergo level 2 background screening may serve in his or her capacity pending the agency's receipt of the report from the Federal Bureau of Investigation. However, the person may not continue to serve if the report indicates any violation of background screening standards and a disqualification exemption has not been requested of and granted by the agency as set forth in chapter 435.

(e) Each applicant must submit to the agency, with its application, a description and explanation of any exclusions, permanent suspensions, or terminations of the applicant from the Medicare or Medicaid programs. Proof of compliance with the requirements for disclosure of ownership and control interests under the Medicaid or Medicare programs shall be accepted in lieu of this submission.

(f) Each applicant must submit to the agency a description and explanation of any conviction of an offense prohibited under the level 2 standards of chapter 435 by a member of the board of directors of the applicant, its officers, or any individual owning 5 percent or more of the applicant. This requirement does not apply to a director of a not-for-profit corporation or organization if the director serves solely in a voluntary capacity for the corporation or organization, does not regularly take part in the day-to-day operational decisions of the corporation or organization, receives no remuneration for his or her services on the corporation or organization's board of directors, and has no financial interest and has no family members with a financial interest in the corporation or organization, provided that the director and the not-for-profit corporation or organization include in the application a statement affirming that the director's relationship to the corporation satisfies the requirements of this paragraph.

(g) A license may not be granted to an applicant if the applicant or managing employee has been found guilty of, regardless of adjudication, or has entered a plea of nolo contendere or guilty to, any offense prohibited under the level 2 standards for screening set forth in chapter 435, unless an exemption from disqualification has been granted by the agency as set forth in chapter 435.

(h) The agency may deny or revoke licensure if the applicant:

1. Has falsely represented a material fact in the application required by paragraph (e) or paragraph (f), or has omitted any material fact from the application required by paragraph (e) or paragraph (f); or

2. Has had prior action taken against the applicant under the Medicaid or Medicare program as set forth in paragraph (e).

(i) An application for license renewal must contain the information required under paragraphs (e) and (f).

Section 155. Paragraph (j) of subsection (2) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies.—

(2) As used in this section, the term:

(j) “Residential child-caring agency” means any person, corporation, or agency, public or private, other than the child’s parent or legal guardian, that provides staffed 24-hour care for children in facilities maintained for that purpose, regardless of whether operated for profit or whether a fee is charged. Such residential child-caring agencies include, but are not limited to, maternity homes, runaway shelters, group homes that are administered by an agency, emergency shelters that are not in private residences, and wilderness camps. Residential child-caring agencies do not include hospitals, boarding schools, summer or recreation camps, nursing homes, or facilities operated by a governmental agency for the training, treatment, or secure care of delinquent youth, or facilities licensed under s. 393.067 or s. 394.875 or chapter 397.

Section 156. Nothing in this act excuses or relieves the department of any other obligations to abused, neglected or abandoned children in its custody.

Section 157. Except as otherwise provided herein, this act shall take effect September 1, 2000.

Approved by the Governor June 21, 2000.

Filed in Office Secretary of State June 21, 2000.